

No. 15863

United States
Court of Appeals
for the Ninth Circuit

POPE & TALBOT, INC., a corporation,
Appellant,
vs.

JACK V. CORDRAY, Appellee.

Transcript of Record

Appeal from the United States District Court
for the Western District of Washington,
Northern Division

FILED

MAR 31 1958

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

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Seattle 1, Washington,
Attorneys for Appellee.

In the United States District Court, Western Dis-
trict of Washington, Northern Division

Civil Action No. 4219

JACK V. CORDRAY,
vs.

Plaintiff,

POPE & TALBOT, INC., a foreign corporation,
Defendant.

PETITION FOR REMOVAL

To the Honorable Judges of the Above Entitled
Court:

Pope & Talbot, Inc., a foreign corporation, the defendant in that certain action entitled as above pending in the Superior Court of the State of Washington for King County respectfully petitions for removal of said action from said Superior Court to the above entitled court and in support of such petition alleges and shows as follows:

I.

That said action was commenced in the Superior Court of the State of Washington for King County by service of a copy of the Summons and a copy of the Complaint on the said defendant on the 21st day of August, 1956, and no such service having been previously made and the said defendant never having received prior to said last mentioned date through service or otherwise, copy of said summons or complaint or initial pleading setting forth the claim for relief upon which such action or proceed-

ing is based. There are attached hereto, marked Exhibit "A" and by this reference made a part hereof, a copy of said Summons and a copy of said Complaint so served, said plaintiff never having served upon said defendant any other process, pleadings, or orders whatsoever in said action; that said action is pending and wholly undetermined in the Superior Court of the State of Washington for King County, which said court is within the district and division of the above entitled court.

II.

That by said action plaintiff seeks recovery of damages from said defendant in the sum of \$75,000.00 (exclusive of interest and costs) for alleged personal injuries, medical treatment, pain and suffering and lost wages, alleged to have been caused by the defendant, which said damages are alleged to have resulted from an accident occurring in Seattle, King County, Washington, on or about July 15, 1956.

III.

That said action involving an alleged maritime tort on navigable waters is an action over which the above entitled court has original jurisdiction.

IV.

That Jack V. Cordray, plaintiff in said action, was at the time of commencement of said action and still is a citizen and resident of the State of Washington, residing in Seattle, King County, and the defendant therein, said Pope & Talbot, Inc., a foreign corporation, was at the time of the com-

mencement of said action and still is a non-resident of said state, and then was and still is a corporation organized and existing under and by virtue of the laws of the State of California and a citizen and resident of that state.

V.

That said action is a civil action of which the above entitled United States District Court has original jurisdiction, being a civil action between citizens of different states wherein the amount in controversy exceeds the sum or value of \$3,000.00, exclusive of interest and costs.

VI.

That said defendant has caused a removal bond in the reasonable sum of \$250.00 to be executed by good and sufficient corporate surety, conditioned that said defendant will pay all costs and disbursements incurred by reason of removal of said action to the above entitled court should it be determined that said action was not removable or was improperly removed, which bond will be filed with this petition.

Wherefore, said defendant prays that upon the filing of due proof of removal, the above entitled court will exercise its jurisdiction in said action for all other proceedings as required by law.

SUMMERS, BUCEY & HOWARD,
/s/ THEODORE A. LeGROS,

Attorneys for Said Defendant and
Petitioner.

Duly Verified.

EXHIBIT "A"

In the Superior Court of the State of Washington
for King County

JACK V. CORDRAY, Plaintiff,

vs.

POPE & TALBOT, INC., a foreign corporation,
Defendant.

SUMMONS

The State of Washington, to Pope & Talbot, Inc.,
a foreign corporation, Defendant:

You are hereby summoned to appear within twenty days after service of this summons upon you, if served within the State of Washington, and sixty days after service of this summons upon you, if served without the State of Washington, exclusive of the day of service, and defend the above entitled action in the above entitled Court, and answer the complaint of the plaintiff herein and serve a copy of your answer upon the undersigned attorneys for plaintiffs, at their address below stated; and, in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, a copy of which is herewith served upon you, and a copy of which will be filed with the Clerk of said Court.

ZABEL & POTH,

By PHILIP J. POTH,

Attorneys for Plaintiff.

Office and P. O. Address: 518 Fourth & Pike Building, Seattle, Washington.

In the Superior Court of the State of Washington
for King County

JACK V. CORDRAY,

Plaintiff,

vs.

POPE & TALBOT, INC., a foreign corporation,
Defendant.

COMPLAINT

Comes now the plaintiff and for cause of action against the defendant, complains and alleges as follows:

I.

That the plaintiff, Jack V. Cordray, is now and at all times herein mentioned has been a resident of Seattle, King County, State of Washington, said place being in and within the Territorial confines over which the above entitled Court has jurisdiction.

II.

That the defendant, Pope & Talbot, Inc., a corporation, is a foreign corporation, doing business, and having a place of business in Seattle, King County, State of Washington, and was the owner and operator of the steamship, P&T Adventure, and at all times mentioned in the Complaint, said vessel was employed as a merchant vessel in the navigable waters of Puget Sound.

III.

That prior to the 15th day of July, 1956, the defendant entered into a contract with Olympic

Steamship Co. Inc., said company agreeing to act, and acting, at all times mentioned in this complaint, as an independent contractor, having complete control and supervision of operations pertaining to the loading and discharge of cargo from said defendant's vessel, P&T Adventure, in the Port of Seattle, in the navigable waters of Puget Sound, at Seattle, Washington.

IV.

That as an independent contractor, Olympic Steamship Co., Inc., hired the plaintiff as a foreman of longshoremen, and entered upon the performance of said contract and the plaintiff, at all times herein mentioned, acted under the orders of the Olympic Steamship Co. Inc., in its capacity as an independent contractor or employer, and not as an agent of said vessel, and its said owners and operators.

V.

That plaintiff has elected to recover damages against a third person, other than his employer, to-wit: said defendant, and is entitled to sue here under Section 933 of Title 33, U.S.C.A., and amendments thereto, and defendant has notified the Commissioner of this District, administering the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C.A., 901 et. seq. of said election.

VI.

That on or about the 15th day of July, 1956, at about the hour of 4:45 a.m., the plaintiff while in the course of his employment and in the carrying

out of the duties of his said employment, was obliged to traverse the weather-deck of said vessel while said vessel was moored in the navigable waters of the Port of Seattle, alongside Pier 48 in said harbor; that while plaintiff was in the vicinity of the No. 2 hatch, the pennant on the gantline block on the starboard boom of said No. 2 hatch, suddenly parted and caused said pennant and gantline block to fall and violently strike and injure the plaintiff.

VII.

That said pennant and gantline block was an integral part of the gear, tackle, apparel and furniture of said vessel; that the proximate cause of plaintiff injuries and subsequent damages as more fully hereinafter set out of plaintiff's said injuries was the unseaworthiness of said vessel with respect to its said pennant boom.

VIII.

That as a proximate result of said negligence and the unseaworthiness of said vessel as aforesaid, plaintiff was struck with great force and violence and sustained severe and permanent injuries to his head and neck; that he sustained a severe nervous shock, pain and mental suffering; that the full extent of plaintiff's injuries are as yet not definitely known *by will* be supplied by way of an Amended Complaint as soon as they become definitely ascertained; that plaintiff has been obliged to incur liability by reason of said injuries for hospitalization, medical care and treatment; that libelant has lost

wages, and will continue to lose wages for a long time to come solely by reason of said injuries; that by reason of the foregoing, plaintiff has been damaged in the sum of \$75,000.00.

Wherefore, plaintiff prays for judgment against the defendant for \$75,000.00, together with his costs and disbursements herein to be taxed.

ZABEL & POTH,
By PHILIP J. POTH,
Attorneys for Plaintiff.

Duly Verified.

[Endorsed]: Filed September 5, 1956.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant and for answer to the alleged cause of action as set forth in plaintiff's complaint does admit, deny and allege as follows:

I.

Defendant admits Paragraph I of plaintiff's complaint.

II.

Defendant admits Paragraph II of plaintiff's complaint except only that the correct name of defendant's vessel is the "P & T Adventurer".

III.

Defendant denies each and every allegation, matter and thing set forth in Paragraph III of plaintiff's complaint.

IV.

Defendant denies each and every allegation, matter and thing set forth in Paragraph IV of plaintiff's complaint.

V.

Defendant has no knowledge as to the matters set forth in Paragraph V of plaintiff's complaint and therefore denies the same.

VI.

Defendant admits that plaintiff was injured on or about the 15th day of July, 1956 at about 4:45 a.m. when a gantline block of said vessel struck and injured plaintiff but except as so admitted defendant does deny each and every allegation, matter and thing contained in Paragraph VI of plaintiff's complaint.

VII.

Defendant admits that the gantline block was a part of the gear, tackle and equipment of said vessel but except as so admitted does deny each and every other allegation, matter and thing contained in Paragraph VII of plaintiff's complaint.

VIII.

Defendant admits that plaintiff received minor injuries when struck by said block but except as so admitted does deny each and every allegation, matter and thing contained in Paragraph VIII of plaintiff's complaint and does particularly deny that plaintiff has been damaged in the sum of \$75,000.00 or any other sum.

First Affirmative Defense

For further answer and by way of a first affirmative defense the defendant alleges as follows:

I.

That if plaintiff was injured and/or damaged as alleged in plaintiff's complaint all of said injuries and/or damages were proximately caused and contributed to by the negligence of plaintiff by voluntarily placing himself or remaining in a dangerous position, in failing or omitting to take reasonable precautions for his own safety and in other further and negligent acts or omissions the particulars of which are not presently available to this defendant and for which it will ask leave to amend when said particulars become known.

Wherefore, having fully answered plaintiff's complaint defendant prays that said complaint be dismissed with prejudice and that defendant have and recover its costs and disbursements herein to be taxed.

SUMMERS, BUCEY & HOWARD,
/s/ By THEODORE A. LeGROS,
Attorneys for Defendant.

Acknowledgment of Service Attached.

[Endorsed]: Filed September 11, 1956.

[Title of District Court and Cause.]

NOTICE OF APPLICATION FOR TRIAL
AMENDMENT

To: The Defendant above named, and to, Summers,
Bucey & Howard, Its Attorneys:

You, and Each of You, will please take notice that at the commencement of the trial of the above entitled cause, on the 16th day of April, 1957, at the hour of 10:00 o'clock a.m., or as soon thereafter as counsel can be heard, plaintiff will apply to the Court for leave to amend paragraph VII of plaintiff's complaint as follows:

VII.

That the proximate causes of plaintiff's injuries and damages, as more fully hereinafter set forth, were the unseaworthiness of said vessel with respect to said pennant and gantline block, the negligence of the officers and personnel aboard said vessel, and the breach of defendant's non-delegable duty to safeguard plaintiff, a business guest and invitee aboard said vessel, from injury by negligent acts.

Dated this 11th day of April, 1957.

ZABEL & POTH,
/s/ By PHILIP J. POTH,

Attorneys for Plaintiff.

Acknowledgment of Service Attached.

[Endorsed]: Filed April 12, 1957.

[Title of District Court and Cause.]

ORDER GRANTING LEAVE FOR AMEND-
MENT OF PLAINTIFF'S COMPLAINT

This matter coming on regularly for hearing on application of the plaintiff for leave to amend his complaint in respect to paragraph VII; now, therefore, it is hereby

Ordered, Adjudged and Decreed that leave is hereby granted to plaintiff to substitute for the present language of paragraph VII of plaintiff's complaint, the following:

VII.

That the proximate causes of plaintiff's injuries and damages, as more fully hereinafter set forth, were the unseaworthiness of said vessel with respect to said pennant and gantline block, the negligence of the officers and personnel aboard said vessel, and the breach of defendant's non-delegable duty to safeguard plaintiff, a business guest and invitee aboard said vessel, from injury by negligent acts.

Done in Open Court this 27th day of May, 1957.

/s/ JOHN C. BOWEN,
Judge.

Presented by:

/s/ PHILIP J. POTH
Of Counsel for Plaintiff.

Approved as to form only—Notice presentation
waived:

/s/ CHARLES B. HOWARD

Of Counsel for Defendant.

Acknowledgment of Receipt of Copy Attached.

[Endorsed]: Filed May 27, 1957.

[Title of District Court and Cause.]

DEFENDANT'S ANSWER TO AMENDMENT
OF PLAINTIFF'S COMPLAINT

Comes now the defendant and for answer to the amendment in Paragraph 7 of Plaintiff's Complaint as authorized by order of court entered May 27, 1957, does admit, deny and allege as follows:

I.

Defendant denies each and every allegation contained in the amendment to Paragraph 7 of Plaintiff's Complaint.

II.

Defendant restates and realleges its first affirmative defense as contained in original Answer served and filed in this cause on September 11, 1956.

Wherefore, having fully answered the amendment to Plaintiff's Complaint, defendant prays that the same be dismissed with prejudice and that de-

fendant have and recover its costs and disbursements herein to be taxed.

SUMMERS, BUCEY & HOWARD,
/s/ CHARLES B. HOWARD,
Attorneys for Defendant.

Acknowledgment of Receipt of Copy Attached.
[Endorsed]: Filed May 29, 1957.

[Title of District Court and Cause.]

PRETRIAL ORDER

Admitted Facts

I.

That the plaintiff, Jack V. Cordray, age 36 at the time of the accident, is now, and at all times herein mentioned, has been a resident of Seattle, King County, State of Washington, said place being in and within the Territorial confines over which the above entitled Court has jurisdiction.

II.

That the defendant, Pope & Talbot, Inc., a corporation, is a foreign corporation, incorporated under the laws of the State of California, with its principal place of business in San Francisco, California; that at all times herein pertinent, said defendant was doing business, and had a place of business, in Seattle, King County, State of Washington, and was the owner and operator of the

steamship, P & T Adventurer, said vessel being employed as a merchant vessel on the navigable waters of Puget Sound, and elsewhere.

III.

That there exists a diversity of citizenship between the plaintiff and the defendant, and the venue of this action is properly in this Honorable Court. (Title 28, U. S. C. A., 1332.)

IV.

That prior to the 15th day of July, 1956, the defendant entered into a contract with Seattle Stevedore Co., said Company agreeing to act, and acting at all times mentioned in this complaint as an independent contractor, having complete control and supervision of all operations pertaining to the discharge of cargo from the holds of defendant's said vessel to the ship's side at Pier 48, in the Port of Seattle, in the navigable waters of Puget Sound, on the said 15th day of July, 1956.

V.

That prior to the 15th day of July, 1956, on which date plaintiff was engaged in the moving of cargo from ship's side to place of rest on dock or railway car, the defendant entered into an agreement with Olympic Steamship Co., Inc., to, in the course of its own public dock business and not as the appointed agent of Pope & Talbot, or Seattle Stevedore Co., receive, at ship's side at said Olympic Steamship Co.'s dock at Pier 48, and to stow

in the warehouse on, and in railroad cars on spur tracks at, said dock, the cargo of the P & T Adventurer, upon compensation for work done before the cargo comes to rest where stowed on the dock or loaded on railroad cars payable by Pope & Talbot to said Olympic Steamship Co.

VI.

That in pursuance of its aforesaid handling of the said ship's cargo, Olympic Steamship Co., Inc., employed the plaintiff, Jack V. Cordray, as a foreman over other shoreside workmen, employed by it handling said cargo on its said Pier 48.

VII.

That at all times pertinent herein, plaintiff was so employed.

VIII.

That plaintiff has elected to recover damage against a third person, other than his employer, to-wit: Said Defendant, and is entitled to sue here under Section 933 of Title 33, U. S. C. A., and amendments thereto, and plaintiff has notified the Commissioner of the District, administering the Longshoremen's and Harbor Workers' Compensation Act, U. S. C. A. 901, et seq., of said election.

IX.

That the plaintiff, Jack V. Cordray, was injured while on the deck of the S. S. P & T Adventurer, in the vicinity of No. 2 hatch during the early morning of July 15, 1956.

X.

That following said accident, the plaintiff was hospitalized and has undergone medical treatment and has incurred expense for hospitals and doctors; that prior to the accident which occurred on July 15, 1956, he had been involved in another industrial accident causing injury to his back for which he underwent surgery by Dr. D. G. Leavitt for repair of a herniated disc in the region of the lower back.

XI.

That the S. S. P & T Adventurer was in navigable waters within the Western District of Washington at the time of this action, and this Court has jurisdiction of the subject matter and the parties to the action.

The foregoing facts, are agreed to by the parties, but each party expressly reserves the right to present at the trial of this action, evidence on said facts and other pertinent or subsidiary facts at the trial of this cause.

Defendant's Contended Issues of Fact

1. Whether or not Olympic Steamship Co., Inc., as the employer of plaintiff, had any written or oral contract or agreement with defendant Pope & Talbot, Inc. calling for it to perform any stevedoring services involved in the loading and/or discharging of cargo from the SS P&T Adventurer at Pier 48, Seattle, on 14-15 July, 1956.

2. Whether or not Olympic Steamship Co., Inc., as the employer of plaintiff, did in fact perform any stevedoring services involved in the loading and/or discharging of cargo from the SS P&T Adventurer at Pier 48, Seattle, on 14-15 July, 1956.

3. Whether or not the operations of Olympic Steamship Co., Inc. on 14-15 July, 1956 were limited to the receipt and handling or movement of such cargo from the SS P&T Adventurer at Pier 48, Seattle, under the terms of Seattle Terminals Tariff No. 2-D and No. 100 after such cargo had been discharged from the SS P&T Adventurer by Seattle Stevedore Co. as an independent stevedore contractor.

4. Whether or not slingmen employed by Seattle Stevedore Co. and stationed on Pier 48 adjacent to the SS P&T Adventurer performed all services required in connection with the connecting and/or disconnecting of cargo slings and cargo handling gear being used by Seattle Stevedore Co. as an independent stevedore contractor in discharging and/or loading cargo from or to the SS P&T Adventurer at Pier 48 on 14-15 July, 1956.

5. Whether or not plaintiff Cordray, as a dock foreman employed by Olympic Steamship Co., Inc., at Pier 48, Seattle, on 14-15 July, 1956 had any duties which required him to be present aboard the SS P&T Adventurer during loading and/or discharging operations being conducted by Seattle Stevedore Co. as an independent stevedore contractor employed by defendant Pope & Talbot, Inc.

6. Whether or not longshoremen employed by Seattle Stevedore Co. were the only persons engaged in winging in the booms and securing the cargo handling gear at the No. 2 hatch on the SS P&T Adventurer immediately prior to the accident to plaintiff on the morning of 15 July, 1956.

7. Whether or not plaintiff Cordray was engaged in any way in the operation of winging in the booms or securing the cargo handling gear of the SS P&T Adventurer on the morning of 15 July, 1956, and whether or not plaintiff Cordray had any responsibility or duties in connection with such operations.

8. Whether or not plaintiff Cordray had any legitimate business aboard the SS P&T Adventurer on the morning of 15 July, 1956 immediately before the accident in question.

9. What caused the wire strap attached to the tip of the No. 2 starboard boom of the SS P&T Adventurer to carry away on the morning of 15 July, 1956?

10. Was the SS P&T Adventurer seaworthy? If not, what was the unseaworthy condition?

11. Was the defendant Pope & Talbot, Inc., negligent with respect to the accident to plaintiff Cordray on 15 July, 1956?

12. Was plaintiff Cordray contributorily negligent with respect to the accident on 15 July, 1956? If so, to what extent or in what percentage did

plaintiff's negligence contribute to cause the accident?

13. In what amount if any did plaintiff sustain damages as a result of the accident in question, such as

(a) Loss of past earnings and any reduction in future earning capacity.

(b) Medical and hospital expenses incurred by plaintiff for which payment has not and will not be assumed or paid by other persons.

(c) Pain and suffering.

Defendant's Contended Issues of Law

1. What was the status of plaintiff Cordray as a dock foreman while aboard the SS "P&T Adventurer" with particular regard to whether he was a longshoreman or stevedore, a business guest-invitee, a mere licensee or a trespasser?

2. Was plaintiff Cordray within the class of workers to whom the defendant shipowner owed a duty to supply a seaworthy vessel?

3. Is plaintiff Cordray entitled to recover damages from the defendant even though he fails to prove that his injuries were proximately caused by any negligence of the defendant as alleged in the complaint?

4. Did defendant have a non-delegable duty to provide plaintiff Cordray with a safe place to work while plaintiff was aboard the SS "P&T Adventurer"? If so, can plaintiff recover damages against

defendant on proof of breach of any such alleged duty without proving negligence of the defendant?

Plaintiff Contends That the Issues of Fact to Be Determined Are as Follows:

I.

Whether or not plaintiff, Cordray, as a foreman, employed by Olympic Steamship Co., Inc., at Pier 48, Seattle, King County, Washington, on July 15, 1956, had any duties or business which caused him to be present aboard the S. S. P & T Adventurer during loading and/or discharging operations being conducted by the Seattle Stevedore Co. as an independent stevedore contractor employed by defendant, Pope & Talbot, Inc.

II.

If plaintiff had any business or duties aboard the vessel, were the same in any way related to the vessel's cargo?

III.

How did plaintiff's accident occur?

IV.

Was the accident caused by unseaworthiness and/or negligence, or both?

V.

Was the plaintiff negligent, and, if so, did said negligence contribute to his injuries?

VI.

What were the damages, if any, sustained by plaintiff?

Plaintiff Contends That the Issues of Law to Be Determined Are as Follows:

I.

Was the tort, if any, maritime?

II.

What was the legal status of the plaintiff when he was injured aboard the vessel:

- a. Longshoreman;
- b. Business guest invitee;
- c. Merely licensee; or
- d. Trespasser?

III.

What duty did defendant vessel owner owe the plaintiff when he was aboard said vessel in respect to:

- a. Warranty of seaworthiness;
- b. Duty to provide plaintiff with a safe place in which to work; or
- c. Negligence?

IV.

What was the responsibility of the vessel owner for the negligence, if any, of Seattle Stevedore Co.?

The plaintiff and defendant expressly reserve the right to present at the trial of this action, other pertinent or subsidiary facts and issues of fact and law which conceivably could arise during the progress of the trial.

Done in Open Court at Seattle, Washington, this
18th day of October, 1957.

/s/ JOHN C. BOWEN,
United States District Judge.

Form Approved:

/s/ PHILIP J. POTH,
Attorneys for Plaintiff.

/s/ CHARLES B. HOWARD,
Attorneys for Defendant.

[Endorsed]: Filed October 18, 1957.

[Title of District Court and Cause.]

DEFENDANT'S MOTION FOR DISMISSAL
OF ACTION UNDER F.R.C.P. RULE 41(b)

At the close of plaintiff's evidence, defendant hereby moves for dismissal of plaintiff's action on the ground that upon the facts of record and upon the law applicable to said action, that plaintiff has shown no right to relief against the defendant Pope & Talbot, Inc.

SUMMERS, BUCEY & HOWARD,
/s/ CHARLES B. HOWARD,
Attorneys for Defendant.

[Endorsed]: Filed November 13, 1957.

[Title of District Court and Cause.]

DEFENDANT'S MOTION FOR DIRECTED
VERDICT AGAINST PLAINTIFF UN-
DER F.R.C.P. RULE 50 (AT CLOSE OF
ALL EVIDENCE)

At the close of all of the evidence in the above entitled action, defendant hereby moves for a directed verdict against the plaintiff and in favor of the defendant, Pope & Talbot, Inc. upon the following specific grounds:

1. That all such evidence fails to show that plaintiff is entitled to relief from defendant on the ground of unseaworthiness;
2. That all such evidence fails to show that plaintiff is entitled to relief against defendant on the basis of negligence or negligent failure to perform any duty owing from defendant to plaintiff;
3. That all such evidence fails to show any unseaworthiness of the vessel or negligence of defendant on the basis of which plaintiff would be entitled to recover against defendant.

SUMMERS, BUCEY & HOWARD,
/s/ CHARLES B. HOWARD,
Attorneys for Defendant.

[Endorsed]: Filed November 14, 1957.

[Title of District Court and Cause.]

DEFENDANT'S REQUESTED
INSTRUCTIONS

Comes now the defendant Pope & Talbot, Inc., and without waiving motions made or to be made during the trial of this cause, respectfully requests the court to instruct the jury as follows:

SUMMERS, BUCEY & HOWARD,
/s/ By CHARLES B. HOWARD,
Attorneys for Defendant.

* * * * *

Instruction No.....

The plaintiff has alleged liability on the part of the defendant because of unseaworthiness of defendant's vessel.

You are instructed that a vessel is seaworthy when it is reasonably fit for the voyage or the work to which the vessel is to be applied. It is a vessel in a fit state as to repairs, equipment and crew and in all other respects to encounter and meet the ordinary perils of the voyage. The test of seaworthiness is whether the vessel is reasonably fit to carry a cargo and crew which it has undertaken to transport.

An owner is not obliged to provide the best possible vessel and gear, and his obligation as to seaworthiness is satisfied by provision of a vessel and gear reasonably safe and suitable even if there may have been equipment more modern or more

perfect in some detail. The standard of seaworthiness is not perfection but reasonable fitness.

“Unseaworthiness” exists whenever the vessel itself or its appliances, appurtenances, or places of work are not reasonable, safe or adequate for the purposes for which they are intended or ordinarily used.

Recovery on the grounds of unseaworthiness is limited to seamen and to those persons performing work for the ship which normally has been performed by members of the crew of the vessel.

Before plaintiff can recover in this case he must establish two facts. First, he must prove that the vessel was unseaworthy. Secondly, he must prove that he was performing work at the time of the accident which would normally be performed by members of the crew.

Instruction No.

The term “non-delegable duty”, as referred to in these instructions, relates only to a shipowner’s obligation to provide a seaworthy vessel to seamen and to workmen engaged in types of work traditionally performed by seamen. The term “non-delegable duty” does not relate to charges of negligence.

A “non-delegable duty” is a duty whose performance may properly be delegated to another person, but subject to the condition that liability will follow if the person to whom the performance is delegated acts improperly with respect to it.

* * * * *

Instruction No.....

In deciding whether or not plaintiff is entitled to recover from the defendant on the charge of negligence you must determine whether plaintiff was a "licensee" or an "invitee" while aboard the "P&T Adventurer" since the extent of the owner's duty owing to the two classes of persons differs under the law applicable to this case.

An "invitee" is one who is either expressly or impliedly invited onto the premises of another for some purpose connected with the business in which the shipowner or operator is then engaged. To establish such relationship there must be some real or supposed mutuality of interest in the subject to which the visitor's business relates. As to an invitee the shipowner must use reasonable care to discover the actual condition of his premises and either make them safe or to warn him of any latent dangers or defects in the ship or its appliances.

A "licensee" occupies an intermediate position between that of an invitee and that of a trespasser. He is one who goes upon the premises of another, either without any invitation, express or implied, or else for some purpose not connected with the business conducted on the ship, but goes, nevertheless with the permission or at the toleration of the owner. As to a licensee the shipowner owes him no duty as to its condition, except that it must warn him of perils known to the shipowner and must refrain from wantonly or wilfully injuring him.

Instruction No.....

You are instructed that if you find from the evidence that plaintiff's alleged injuries, if any, were caused solely by reason of improper use of a proper appliance by longshoremen employed by Seattle Stevedore Co., then your verdict must be for the defendant.

* * * * *

Instruction No.....

You are instructed that a person may not cast the burden of his own protection upon another. He owes this duty to himself. The law does not permit him to close his eyes to risk, or danger, and then, if he is injured as the result of such risk or danger, to be excused from the consequences of his own act or omission. He must use his own intelligence and faculties for his own protection.

* * * * *

Instruction No.....

The defendant has pleaded that if plaintiff was injured as alleged in his complaint, any such injuries were caused and contributed to by his own carelessness and negligent acts.

“Contributory negligence” is negligence or want of care, as herein defined, on the part of a person suffering injury or damage which proximately contributes to cause the injury and damage complained of.

In many cases contributory negligence on the part of a plaintiff would defeat his recovery entirely. Since this case is governed by maritime law,

a different rule as to contributory negligence is applicable.

I instruct you that in the event you should find that plaintiff himself was negligent as to any of the acts or omissions as alleged by defendant, such negligence of plaintiff does not bar him from recovery of damages under his complaint, unless you find that such injuries or damages were caused solely by plaintiff's own negligence, or the sole negligence of some third party, in which event your verdict will be for the defendant.

If you find that plaintiff's injuries or damage, if any, were caused solely by the unseaworthiness of defendant's vessel and you also find that plaintiff was performing work on the vessel which would normally be performed by seamen or members of the crew so as to be within the class of persons to whom defendant owed a duty to provide a seaworthy vessel, then your verdict will be for the plaintiff, and you will determine the full amount of his damages which you find that he has sustained as the result of the alleged injuries according to the rules on damages about which I will hereafter instruct you.

If you find that the plaintiff was negligent, and you also find that plaintiff was performing work on the vessel which would normally be performed by seamen or members of the crew so as to be within the class of persons to whom defendant owed a duty to provide a seaworthy vessel, and the defendant's vessel was unseaworthy, or if you find that defendant was negligent and that such unsea-

worthiness or negligence, if any, contributed to cause the accident of which plaintiff complains, then your verdict will be for the plaintiff and against the defendant, but after determining the full amount of plaintiff's damages, you will diminish the amount to which he would be entitled to recover against the defendant by the proportion in which you find that plaintiff's own negligence contributed to cause his own injuries or damages, if any.

Special Interrogatories

In addition to your verdict in this case, you will answer the following interrogatories:

Interrogatory No. 1: Was the condition of ship's gear and equipment a proximate cause of this accident?

Answer:.....("Yes" or "No")

Interrogatory No. 2: If your answer to the preceding interrogatory is "yes", was this accident caused solely or in part by the condition of the ship's gear and equipment?

Answer: Solely("Yes" or "No")

In part.....("Yes" or "No")

Interrogatory No. 3: Was the manner in which longshoremen, employed by a third party, used the ship's gear and equipment a proximate cause of this accident?

Answer:.....("Yes" or "No")

Interrogatory No. 4: If your answer to Interrogatory No. 3 is "yes", was this accident caused solely or in part by the manner in which longshore-

men, employed by a third party, used the ship's gear and equipment?

Answer: Solely ("Yes" or "No")

In part..... ("Yes" or "No")

Interrogatory No. 5: Was the plaintiff negligent?

Answer:..... ("Yes" or "No")

Interrogatory No. 6: If your answer to Interrogatory No. 5 is "yes", was such negligence of plaintiff the sole or a contributing cause of the accident, and if contributing, in what percentage?

Answer:..... ("Sole")

..... ("Contributing")

..... (Fill in percentage plaintiff's negligence contributed)

Acknowledgment of Receipt of Copy Attached.

[Endorsed]: Filed November 7, 1957.

[Title of District Court and Cause.]

VERDICT

We, the Jury in the Above-Entitled Cause, Find for the Plaintiff and assess Plaintiff's amount of recovery in the sum of Twenty Eight Thousand and Seven Hundred Fifty Dollars (\$28,750).

/s/ D. E. CORNELL,
Foreman.

[Endorsed]: Filed November 15, 1957. Entered November 18, 1957.

[Title of District Court and Cause.]

EXCERPT FROM DOCKET ENTRIES SHOW-
ING ENTRY OF JUDGMENT

* * * * *

1957

Nov. 15—Ent. record of trial to jury. (6th day).

” —Filed verdict for plaintiff and against the defendant in the sum of \$28,750.00.

18—Ent. Judgment in favor of Plaintiff and against deft. in the sum of \$28,750.00 in Civil Docket in accordance with Rule 58 F.R.C.P.

22—Filed Deft's Motion for a New Trial under FRCP Rule 59.

22—Filed Motion to have verdict and any judgment thereon set aside and for entry Judgment in accordance with motions for Directed Verdict under FRCP Rule 50(b). * * * * *

Dec. 13—Filed and ent. order denying defendant's motion for Judgment notwithstanding the verdict and motion for new trial.

* * * * *

[Title of District Court and Cause.]

DEFENDANT'S MOTION FOR A NEW TRIAL
UNDER F.R.C.P. RULE 59

In the alternative and subject to the court's further ruling on motions for a directed verdict or a

judgment notwithstanding the verdict of the jury under F.R.C.P. Rule 50, defendant moves the court for an order granting it a new trial of this action upon the following grounds:

1. Error in instructions to the jury concerning the law applicable to the case, to which instructions and the failure to give proposed instructions submitted in writing by defendant exceptions or objections were duly taken by defendant's counsel before the case was finally submitted to the jury;

2. Abuse of discretion and error of law by the Court wherein the Court permitted plaintiff to amend paragraphs III and VIII of the complaint after the close of plaintiff's case in chief and after the commencement of presentation of evidence on defendant's answering case;

3. That the damages awarded plaintiff by the verdict of the jury are excessive and are entirely unsupported as to amount by the undisputed evidence presented in the case;

4. That the damages awarded plaintiff by the verdict of the jury are so grossly excessive as to unmistakably indicate that the amount of the verdict was the result of passion and prejudice by the jury.

5. Abuse of discretion and error of law by the Court in submitting to the jury general form of verdict without Special Interrogatories requested in writing by defendant thereby rendering it impossible to determine whether the verdict for plaintiff was found by the jury on alleged unseaworthi-

ness or alleged negligence, adversely and prejudicially affecting defendant's rights to preserve these questions for further consideration if an appeal is taken.

6. Other errors of law occurring during the course of the trial.

This Motion is based upon the records herein, the evidence and proceedings at the trial as set forth in Local Civil Rule 48, transcript of the objections made by defendant's counsel and transcript of the instructions as given by the Court, which will be filed in support of the Motion.

Dated this 22nd day of November, 1957.

SUMMERS, BUCEY & HOWARD,
/s/ CHARLES B. HOWARD,

Attorneys for Defendant, Pope &
Talbot, Inc.

Acknowledgment of Receipt of Copy Attached.

[Endorsed]: Filed November 22, 1957.

[Title of District Court and Cause.]

MOTION TO HAVE VERDICT AND ANY
JUDGMENT THEREON SET ASIDE AND
FOR ENTRY JUDGMENT IN ACCORD-
ANCE WITH MOTIONS FOR DIRECTED
VERDICT UNDER F.R.C.P. RULE 50(b)

Defendant Pope & Talbot, Inc., both at the close of the evidence offered by the plaintiff and at the

close of all the evidence offered at the trial, having made motions for directed verdict in favor of the defendant and against the plaintiff upon specific grounds as stated in the motions on file herein and as argued to the court at the time of presentation of said motions, each of which motions having been denied and verdict of the jury having been returned on November 15 in favor of the plaintiff and against this defendant, does:

In accordance with F.R.C.P. Rule 50(b) and in harmony with each of the aforesaid motions, move for an order setting aside said verdict as against the defendant and setting aside any judgment entered thereon, upon the following grounds:

1. That all such evidence fails to show that plaintiff is entitled to relief from defendant on the ground of unseaworthiness;
2. That all such evidence fails to show that plaintiff is entitled to relief against defendant on the basis of negligence or negligent failure to perform any duty owing from defendant to plaintiff;
3. That all such evidence fails to show any unseaworthiness of the vessel or negligence of defendant on the basis of which plaintiff would be entitled to recover against defendant.

Defendant further moves for entry of judgment of dismissal in its favor and against the plaintiff.

Dated this 22nd day of November, 1957.

SUMMERS, BUCEY & HOWARD,
/s/ CHARLES B. HOWARD,

Attorneys for Defendant, Pope &
Talbot, Inc.

Acknowledgment of Receipt of Copy Attached.

[Endorsed]: Filed November 22, 1957.

[Title of District Court and Cause.]

ORDER ON POST TRIAL MOTIONS

This cause having come on regularly for hearing on December 9, 1957 before the above entitled Court upon defendant's alternative Motions for Judgment Notwithstanding the Verdict and for New Trial, each party being represented by counsel, the Court having considered the argument of counsel, the brief of defendant in support of said Motions and the transcripts filed in support thereof, and having thereupon announced its ruling denying both of said Motions, now therefore, in conformity therewith it is hereby:

1. Ordered that Motion of Defendant for Judgment Notwithstanding the Verdict be and it is hereby denied; and it is further

2. Ordered that Motion of Defendant for a New Trial be and it is hereby denied.

Done in Open Court this 13th day of December, 1957.

/s/ JOHN C. BOWEN,
U. S. District Judge.

Prepared and presented by:

/s/ CHARLES B. HOWARD
Of Attorneys for Defendant.

Approved by:

ZABEL & POTH,
/s/ By OSCAR A. ZABEL,
Of Attorneys for Plaintiff.

Notice of presentation waived.

/s/ PHILIP J. POTH.

[Endorsed]: Filed and Entered Dec. 13, 1957.

[Title of District Court and Cause.]

COST AND SUPERSEDEAS BOND
ON APPEAL

Know All Men by These Presents:

That we, Pope & Talbot, Inc., a corporation, the defendant in the above cause, as principal, and Glens Falls Insurance Company, a corporation authorized to transact a surety business within the State of Washington, as surety, are held and firmly bound unto Jack V. Cordray, the plaintiff in said cause, in the sum of Thirty-Two Thousand and No/100 Dollars (\$32,000.00), lawful money of the United States, for the full and complete payment

of which, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Whereas, said above named Jack V. Cordray, as plaintiff, has heretofore filed his complaint against the defendant, Pope & Talbot, Inc., a foreign corporation, to recover damages for reasons in said complaint alleged; and

Whereas, after trial upon all issues in said cause, the jury returned a verdict on November 18, 1957 upon which judgment has now been entered in the full sum of Twenty-eight Thousand Seven Hundred Fifty and No/100 Dollars (\$28,750.00), together with plaintiff's costs and disbursements herein to be taxed, and with interest thereon until paid; and

Whereas, notice of appeal has now been served and filed in said cause by the defendant, Pope & Talbot, Inc., to the United States Court of Appeals for the Ninth Circuit;

Now, Therefore, the condition of this obligation is such that if said Pope & Talbot, Inc., as the defendant and appellant and as the principal herein, shall pay the judgment and decree heretofore entered herein, together with any costs, damages and interest that may be awarded against it on appeal or dismissal thereof, or failure to make its plea good; or if said Pope & Talbot, Inc. shall perfect and prosecute an appeal and shall abide by and answer and pay the money awarded by whatever judgment may be rendered by any appellate court

on appeal in the above entitled cause, or whatever judgment may be rendered by the District Court on the mandate of said appellate court, including all damages, costs and interest awarded thereby; then this obligation shall be void, otherwise it shall remain in full force and effect.

Signed and sealed this 13th day of December, 1957.

POPE & TALBOT, INC.,
A Corporation,

By SUMMERS, BUCEY & HOWARD,
/s/ CHARLES B. HOWARD,

Its Attorneys,
Principal.

[Seal] GLENS FALLS INSURANCE
COMPANY,

/s/ By VAN C. GRIFFIN,

Its Attorney-in-Fact,
Surety.

Approved as to amount and notice of presentation waived.

/s/ PHILIP J. POTH.

The foregoing bond is approved, both as a bond staying execution pending appeal and as a cost and supersedeas bond upon appeal.

Done in Open Court this 13th day of December,
1957.

/s/ JOHN C. BOWEN,
District Judge.

Acknowledgment of Receipt of Copy Attached.

[Endorsed]: Filed December 13, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Pope & Talbot, Inc., a corporation, as the Defendant in this cause does hereby appeal to the United States Court of Appeals for the Ninth Circuit from each and every part of the Judgment entered upon the verdict of the jury in this cause on November 18, 1957.

Dated at Seattle, Washington this 13th day of December, 1957.

SUMMERS, BUCEY & HOWARD,
/s/ CHARLES B. HOWARD,
Attorneys for Defendant.

Acknowledgment of Receipt of Copy Attached.

[Endorsed]: Filed December 16, 1957.

[Title of District Court and Cause.]

ORDER AS TO EXHIBITS AND PLEADINGS

On ex parte motion of appellant, Pope & Talbot, Inc., formerly the defendant herein, it is hereby

Ordered and Directed that as a part of the record on appeal in the above entitled action the Clerk of this Court shall transmit to the Clerk of the United States Court of Appeals for the Ninth Circuit the original of all exhibits and pleadings, as required by the rules or as designated either by the appellant or by the appellee in this cause.

Done in Open Court this 20th day of January, 1958.

/s/ WILLIAM J. LINDBERG,
United States District Judge.

Prepared, approved and presented by:

SUMMERS, BUCEY & HOWARD,
/s/ CHARLES B. HOWARD,
Attorneys for Appellant.

Acknowledgment of Receipt of Copy Attached.

[Endorsed]: Filed January 20, 1958.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States

District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 of the United States Court of Appeals for the Ninth Circuit, and Rule 75(o) FRCP, and designations of counsel, I am transmitting herewith the following original documents in the file dealing with the action, and true copies of certain journal entries, as the record on appeal herein to the United States Court of Appeals for the Ninth Circuit at San Francisco, said papers being identified as follows:

1. Petition for Removal, with complaint attached, filed 9-5-56.

4. Answer of defendant, filed 9-11-56.

8. Discovery Deposition of Jack V. Cordray, filed 3-14-57.

12. Motion for Continuance, filed 4-11-57.

13. Notice of Hearing on Motion for Continuance, filed 4-11-57.

14. Notice of Application for Trial Amendment, filed 4-12-57.

Clerk's journal entry of April 12, 1957 concerning application for trial amendment and motion for continuance.

Clerk's journal entry of April 18, 1957 concerning application for trial amendment and motion for continuance.

18. Order Granting Leave for Amendment of Plaintiff's Complaint, filed 5-27-57.

19. Defendant's Answer to Amendment of Plaintiff's Complaint, filed 5-29-57.

26. Pretrial Order, filed Oct. 18, 1957.

35. Defendant's Requested Instructions, filed 11-7-57.

36. Plaintiff's Proposed Instructions, filed 11-7-57.

40. Defendant's Motion for Dismissal of Action under FRCP Rule 41(b), filed 11-13-57.

41. Defendant's Motion for Directed Verdict Against Plaintiff Under FRCP Rule 50 (At Close of all Evidence), filed 11-14-57.

41a. Defendant's Motion for Directed Verdict Under FRCP Rule 50, filed 11-14-57.

42. Verdict, filed Nov. 15, 1957, for plaintiff.

Excerpt from Clerk's Civil Docket Entries showing entry of judgment on verdict, in Civil Docket on 11-18-57.

43. Defendant's Motion for New Trial Under FRCP Rule 59, filed 11-22-57.

44. Motion to have Verdict and Any Judgment Thereon set aside and for entry of judgment in accordance with motions for directed verdict, filed 11-22-57.

45. Court Reporter's Transcript of Court's Instructions to Jury, filed 11-25-57. (Page 533, Statement of Facts, Volume II.)

46. Court Reporter's Transcript of Proceedings of 11-15-57, filed 12-4-57. (Page 531, Statement of Facts, Volume II.)

47. Court Reporter's Transcript of Testimony of Drs. Gray and Miller, filed 12-4-57. (Gray—Statement of Facts, Volume I, Page 118.) (Miller—Statement of Facts, Volume I, Page 274.)

49. Order Denying Motion for Judgment NOV and Motion for New Trial, filed 12-13-57.

50. Cost and Supersedeas Bond on Appeal, filed 12-13-57.

51. Notice of Appeal, filed 12-16-57.

52. Appellant's Designation of Record on Appeal, filed 12-20-57.

53. Statement of Points Upon Which Appellant Intends to Rely, filed 12-20-57.

54. Statement of Proceedings During Trial Which were not Stenographically reported, filed 12/20/57.

56. Statement of Appellee in Response to Defendant Appellants' Purported Statement of Proceedings During Trial which were not Stenographically reported, filed 12/27/57.

57. Motion of Plaintiff-appellee to Strike Defendant's Purported Statement of Proceedings during Trial which were Not Stenographically reported, filed 12/27/57.

58. Appellee's Supplemental Designation of Record, filed 12/27/57.

60. Affidavit of Philip J. Poth in Opposition to Appellant's Statement of Proceedings not Stenographically Reported, filed 1/2/58.

61. Findings and Order on Defendant's Motion to Include in Record on Appeal Document entitled Statement of Proceedings During Trial which were not Stenographically Reported, filed 1/2/58.

62. Appellant's Supplemental Designation of Record on Appeal, filed 1/3/58.

64. Appellant's Second Supplemental Designation of Record on Appeal, filed 1/15/58.

65. Appellant's Third Supplemental Designation of Record on Appeal, filed 1/16/58.

66. Order Directing Transmission of Original Exhibits, filed 1/20/58.

67. Court Reporter's Statement of Facts, Volumes I and II, filed 1/21/58.

68. Court Reporter's Transcript of Proceedings held 1/2/58 on Defendant's Application to Include Statement in Appeal of Proceedings not Stenographically Reported and Plaintiff's Motion to Strike Statement of Proceedings Not Reported, filed 1/21/58.

Plaintiff Exhibits 1 to 7, inclusive, and

Defendant Exhibits A-1 to A-10, inclusive.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by appellants for preparation of the record on appeal in this cause, to-wit, Filing fee, Notice of Appeal, \$5.00; and that

said amount has been paid to me by counsel for appellants.

Witness my hand and official seal at Seattle this 21st day of January, 1958.

[Seal]

MILLARD P. THOMAS,
Clerk,

/s/ By TRUMAN EGGER,
Chief Deputy.

In the District Court of the United States, Western
District of Washington, Northern Division

No. 4219

JACK V. CORDRAY,

Plaintiff,

vs.

POPE & TALBOT, INC., a foreign corporation,
Defendant.

TRANSCRIPT OF PROCEEDINGS

Be It Remembered, that the above entitled and numbered cause was heard before the Honorable John C. Bowen, one of the Judges of the above entitled Court, and a jury, beginning Thursday, November 7, 1957, at 1:55 o'clock p.m.

The plaintiff was represented by Mr. Philip J. Poth, of Messrs. Zabel & Poth, Attorneys at Law.

The defendant was represented by Mr. Charles

B. Howard and Mr. Ramon E. Brown, of Messrs. Summers, Bucey & Howard, Attorneys at Law. [1*]

* * * * *

(Thereupon, a jury was duly empaneled and sworn.) [2]

* * * * *

(Thereupon, Mr. Poth made an opening statement to Court and jury in behalf of plaintiff.)

The Court: The defendant at this time or later at another proper stage in the trial may make its opening statement.

(Thereupon, Mr. Howard made an opening statement to Court and jury in behalf of defendant.)

The Court: The plaintiff may now call his first witness or otherwise proceed with his case in chief.

Mr. Poth: Call Mr. Peters, please. [6]

ROBERT L. PETERS, JR.

called as a witness in behalf of plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Poth): Will you state your name, please? A. Robert L. Peters, Jr.

* * * * *

Q. What is your occupation?

A. Stevedore foreman.

* Page numbers appearing at bottom of page of Reporter's Original Transcript of Record.

(Testimony of Robert L. Peters, Jr.)

Q. And how long have you been a stevedore foreman? A. About thirteen years.

Q. And what did you do before you were a stevedore foreman? A. Longshoreman.

Q. And where was that?

A. In the City of Boston.

Q. And what has been your employment, that is as to employers, since you left Boston?

A. Well, I worked for the Waterfront Employers of Washington.

Q. And were you in the service? [7]

A. Yes, sir.

Q. What branch of the service?

A. United States Navy Seabees.

* * * * *

Q. (By Mr. Poth): What experience have you had with rigging in the Navy and since you've been out?

A. Well, I've been experienced with rigging on ships ever since I started longshoring, for the past twenty-eight years.

Q. Were you ever employed by the Navy?

A. Employed by the Navy?

Q. Yes.

A. I was in the Navy Seabees during the war.

Q. What are the duties of a foreman aboard a ship?

A. Well, to see that the gear is rigged properly and the cargo is stowed properly and discharged properly, see that the hatches are all secured for

(Testimony of Robert L. Peters, Jr.)

sea in the proper manner, discharging and hiring men, and overseeing the equipment.

Q. Now, were you employed aboard the P & T Adventurer on the night of July 14th and the morning of July 15th, 1956? [8] A. Yes, sir.

Q. And in what capacity were you employed aboard that ship?

A. I was the foreman in charge of some of the gangs. There were two other foremen aboard the ship at the same time.

Q. Now referring to the number two hatch of that ship and the number two hold, what operation if any was being carried on there, if you know?

A. At the time of the accident, or——

Q. No, that night.

A. Well, we were discharging general cargo, and I think there was some pipe in the hatch.

Q. How was that handled?

A. Well, that's usually handled on cargo boards with a pair of wire spreaders, and it's stacked on the boards, then a tie rope put on them for safety and then hoisted to the dock.

The Court: Will you explain the spreaders, Captain, the spreaders, so that the jurors will know what you are speaking of?

A. Well, the wire spreaders are four pieces of wire into usually a ring or a shackle, and they have a board across the bottom that hooks in the end of the cargo boards that they do the hoisting with.

Q. (By Mr. Poth): Now, where is the first place of rest of that cargo? [9]

(Testimony of Robert L. Peters, Jr.)

A. Oh, that would be on the dock where it's stowed.

Q. Would it be at the side of the ship where it's disconnected from the ship's tackle?

A. No. I believe the first place of rest is where it's piled on the dock.

Q. Now, who, if you know, was in charge of transporting the cargo from the ship to its first place of rest on the dock in connection with the number two hatch of that ship on that night?

A. Well, that would be Mr. Cordray on that specific ship.

Q. What were his duties, if you know?

A. He was the dock foreman in charge of the bull drivers that take the cargo away from the ship and stack it on the dock, and also to put whatever steel cars we may need under the hooks.

Q. Put cars under the hooks?

A. When we're discharging steel direct to cars it's his job to see that they are put in the proper place.

Q. Now, are you familiar with the custom and practice in respect to dock foremen, particularly in regard to going aboard a vessel on which they are handling cargo?

A. Well, yes, the dock foreman does come aboard at different times to get information from the foreman in charge of the ship as to what you're going to do with the gangs or if you're going to shift from one hatch to the other [10] or if you're going to lay them off at eleven o'clock or midnight

(Testimony of Robert L. Peters, Jr.)

or five in the morning. He has to come aboard to get that information.

Q. Is that a regular custom and practice?

A. Yes, sir, it is.

Q. Here in the Port of Seattle?

A. Yes, sir.

Q. How many times have you worked at Pier 48?

A. Oh, quite often.

Q. Over how long a period of time?

A. In the past eight years I'd say probably maybe two or three nights a week.

Q. And have you observed whether or not it is a custom and practice for dock foremen to go aboard ships discharging cargo at Pier 48?

A. Yes, they do.

Q. And what is the actual reasons that they go aboard?

A. Well, there's several different reasons why they go aboard. A lot of times they go aboard to see what type of cargo is in the hatch, whether they need railroad cars, or to find out from the ship's foreman what he's going to do and what kind of cargo is coming out so he'll know where to put it on the dock and how to stack it. There's several reasons for them to come aboard the ship. [11]

Q. Now, do you recall Mr. Cordray coming aboard the P & T Adventurer at Pier 48 on the morning of July 15th, 1956?

A. Yes, I do.

Q. About what time was it he came aboard to the best of your recollection?

(Testimony of Robert L. Peters, Jr.)

A. Oh, I'd say about ten minutes of five in the morning.

Q. And what conversation did you have with him, if any?

A. Well, he came up and stood alongside of me on the deck right opposite the hatch and he asked me what I was going to do with the gang, so that he would know whether to lay his bull driver off or whether to keep him. A lot of times when we're finishing a ship like that we may cover one hatch and then put a gang into another hatch to load dunnage or ship's gear or whatever might be there to load. The first gang that finishes usually jumps from one hatch to the other to clean up different items that have to be done.

Q. And whereabouts were you and he on the P & T Adventurer when you had this conversation?

A. We were standing just abreast of number two hatch on the starboard side.

Q. And what then happened, if anything?

A. Well, at that particular time just as he started to question me as to what we were going to do with the gang, we were winging in the gear to get it inside so we could [12] shift the gang to another hatch.

Q. All right, and then what happened?

A. During that conversation while he was asking me what I was going to do with the gang the boom was wung in over the edge of the ship and the block on the tent gantline dropped and hit him on the side of the neck and the head.

(Testimony of Robert L. Peters, Jr.)

Q. Now, this tent gantline block that you mentioned, is that a regular part of the ship's gear, tackle and equipment?

A. Yes, it is, on most all ships. Some ships do not have them because they don't use hatch tents. That's to hang a hatch tent in the event of rain or any bad weather to keep the cargo dry.

Q. Is that a permanent fixture on those P & T boats?

A. It is permanent when it is put on there, yes. They leave it there.

Q. And what use are they put to, these tent gantline blocks?

A. Well, them tent gantlines are made for hanging what they call a hatch tent. It covers the whole entire hatch, and it has a slot in the top of it for the fall to run back and forth, to keep the water from going down in the hatch on the cargo, and they are hung up there with two tent gantlines, one on each boom. The gantline is made fast to the forward part of the tent and the other part is made fast to the rail on the ship [13] when it's raised into the air, then it's lashed all around the bottom of the hatch so that no water can run in.

Q. How close to you was Mr. Cordray standing?

A. Right alongside of me.

* * * * *

Q. (By Mr. Poth): Well, I'll ask, standing where you and Mr. Cordray were at the time of this accident, and assuming normal conditions, what possible peril would you as an experienced foreman

(Testimony of Robert L. Peters, Jr.)

and rigger expect to be in, being where you were?

A. Well, I wouldn't be in any peril there.

Q. Why?

A. We're under the gear all the time. The gear is wung out across the deck so that it reaches the dock and you're walking back and forth under it all night long. There's no way possible that you can help from walking under it.

Q. Now, what business did you have there at the number two hatch? What were you doing, if anything? [14]

A. Well, at that particular time I was there to tell them to cover the hatch up and to wing in that gear, secure it for sea.

Q. Now, this boom that was being winged in, I wonder if you could describe briefly to us the various items of tackle that were attached to it and how they were secured?

A. Well, on the head of the boom they have what they call a gin block, and the fall runs down through that to the hook which does the hoisting. That fall is attached to a winch on the deck. There's a similar fall on each winch for each separate boom, and on the head of the boom there's what they call a preventer wire, and there's also a double rope guy, and on each boom there is this tent gantline, and when we wing the boom out and spot it for where we want to work in the hatch, the forward or after end or amidship, wherever it might be, then we secure that rope guy first.

(Testimony of Robert L. Peters, Jr.)

Q. What rope guy? Is that the steam schooner guy?

A. It's the rope guy that's on the boom, on the head of the boom. The steam schooner guy runs ahead of both booms. First we spot the boom and we spot that guy on the yard boom. That's the boom that goes out over the side of the ship to the dock. Then we secure the preventer wire. Then a man stands by that rope guy that [15] we have first secured and we hook the hook into a pad eye on the deck and we set tight on that winch so that that rope guy is tight and the preventer wire and the guy is taking the same strain. We set one boom at a time. When that's done on the yard boom we go across and do the same thing to the amidship boom, which sometimes hangs in the middle of the deck, sometimes it might hang in the middle of the hatch or sometimes it may be winged out offshore over the water, depending on what you're going to work. If you're working cargo in the hold you usually put it over the middle of the deck. If you're working lumber or logs you put it over the side of the ship so that you can reach both sides of the deck.

Q. Now, how was the gantline block, or the tent gantline line secured?

A. Well, we usually don't secure them if we're not using a tent, which we weren't doing that night.

Q. All right.

A. We put the guy rope on the bit and we usually secure the preventer wire to another bit, but if there's none available we put the preventer wire on

(Testimony of Robert L. Peters, Jr.)

top of that. Sometimes the gantline is just hung over a stay; sometimes it may be secured with one wrap around that bit just to keep it from flopping into the fall when a load [16] is coming up, but when you use a tent it's definitely secured to the deck.

Q. Yes. Where is the block suspended from?

A. The gantline block?

Q. The tent gantline block, where does that hang from?

A. The tent gantline block usually hangs off of the end of the boom about six feet, five to six feet. It has a strap shackled in both ends of it. The strap runs from the head of the boom to the tent gantline block, which usually is a wooden block.

Q. Now I'll ask you whether or not you were supervising at the number two hatch at the time of this accident?

A. Yes, I was.

Q. Now, can you tell us whether or not the preventer had been released, let go?

A. Yes, it was.

Q. What is the purpose of a preventer?

A. Well, the purpose of a wire preventer is in the event that you're taking a heavy load, a lot of times you can't tell whether a load is too heavy for the gear or not. You may run into something that's mismarked on the weight or something like that. If the wire rope on the guy carries away there's a chance that the preventer wire will hold it so that you will not tear the boom down and that you don't drop the load and hurt [17] anybody.

(Testimony of Robert L. Peters, Jr.)

Q. Now, you mentioned a rope guy that was also attached to that boom? A. That's right.

Q. What's the name of that rope guy?

A. Well, they just call that the rope guy.

Q. All right. And what is the purpose of that rope guy?

A. That guy is put there to hold the boom out where you want it, whatever position you want the boom in, and they also have an amidship guy that runs from the top of one boom to the top of the other boom, and when you set your two booms like that where you want them, then you set tight on the midship guy and then nothing can move one way or the other. It becomes stationary.

Q. Did you check to see that the rope guy was let go? A. Yes, sir.

* * * * *

Q. (By Mr. Poth): Was it let go?

A. Yes, it was let go.

Q. Did you see that it was let go under your supervision? [18] A. Yes, sir.

Q. Now I'll ask you, was the tent gantline rope secured anywhere at the time that this boom was being winged in? A. No, sir.

Q. What was its condition as you saw it?

A. It was all slack laying on the deck.

Q. Now, did you inspect this tent gantline block after it fell on Mr. Cordray? A. Yes, I did.

Q. Would you please describe to us what you saw?

A. Well, there was roughly about two foot of

(Testimony of Robert L. Peters, Jr.)

strap left on there and it was all rusted where it broke. There wasn't much of a core left in it. I looked at it and then somebody on the dock hol-lered they wanted to see it, some safety man, and I picked it up and threw it on the dock to him.

Q. And then what happened to it, if you know?

A. Well, shortly after that, within five minutes or so, the mate came down. I don't know whether he was the chief mate or the second mate, and he wanted to know what happened to the block and the strap that let go, so I told him, "I threw it out on the dock for the safety man to look at," and he went out and picked it up and brought it back aboard the ship.

Q. Did you ever see it again? [19]

A. No, sir.

Q. Did you make an investigation of this accident afterwards, the cause of the falling of this——

A. No, I didn't.

Q. Well, I'll ask you this: Were you able to determine from your own observation there that night and your experience as a rigger and stevedore foreman and longshoreman the cause of the falling of that block?

* * * * *

A. Well, I could give my opinion as to why it fell. [20]

* * * * *

ROBERT L. PETERS, JR.

(resumed the stand)

The Court: You may resume the interrogation.

Direct Examination—(Continued)

Q. (By Mr. Poth): Mr. Peters, after the tent gantline block fell to the [80] deck of the ship striking Mr. Cordray, what if anything was done with the gantline rope that went through the block?

A. That was taken out of the block by the hatch tender.

Q. Did he cut the rope?

A. No. It has two loose ends on it. There's no need of cutting it. It just simply pulls through the block.

Q. You saw him pull it through the block?

A. Oh, yes.

Q. And what was his purpose for doing that?

The Court: If you could observe what appeared to be his purpose.

Mr. Poth: Yes.

Q. (By Mr. Poth): What appeared to be his purpose?

A. The reason he pulled it out of the block was the safety man on the dock wanted to look at that block, and I told him to pull it out so I could throw the block on the dock. I threw the block some thirty feet from the deck of the ship out onto the dock in through the doorway.

Q. Did you throw the rope with it?

A. Pardon?

Q. Did you throw the rope with it?

(Testimony of Robert L. Peters, Jr.)

A. Oh, no, you couldn't throw the rope with it, it's too long a rope. It's a three and a half inch rope. [81]

The Court: Did you throw with it that part of that wire cable or line or gantline? Did you throw with the block any part of that line that you see there?

A. Yes, there was a wire on the block when I threw it on the dock.

The Court: How did it look as compared with that piece of line which now appears to be engaged in the block?

A. Well, the one that I saw, the one I threw on the dock, the lay was not out of the line, it was all laid in the way it should be and it didn't have no core in it, and the end of that where that's cut off there was completely rusted. I broke the ends off myself with my fingers.

The Court: You may inquire.

Q. (By Mr. Poth): During recess you've had an opportunity of examining this block?

A. Yes, I have.

* * * * *

Mr. Poth: Yes, sir.

Q. (By Mr. Poth): Did you have occasion of examining this block and pennant during recess?

A. Yes, I did.

Q. And was today the first day that you saw it?

A. Since the accident, yes.

Mr. Poth: If the Court will permit, I would like to have the witness view it.

The Court: That will be done.

(Testimony of Robert L. Peters, Jr.)

(Defendant's Exhibit No. A-4 was placed before the witness.)

Mr. Poth: If the Court would permit, I would like to have the witness examine the ends of the wire on the pennant.

The Witness: I have examined them before.

The Court: Examine the wire and the ends of the wire and the block and everything about that thing which you now have on the witness chair's reading desk in front of the chair you are occupying, and be prepared to answer questions about. That exhibit number is——

Q. (By Mr. Poth): Have you in your experience——

The Court: Has that a number?

Mr. Howard: A-4, Your Honor.

Q. (By Mr. Poth): Have you in your experience as a stevedore foreman personally observed the falling of tent gantline blocks?

A. Yes, I have.

Q. On how many occasions? [83]

A. Oh, I'd say possibly three or four occasions in the past eight years.

* * * * *

Q. (By Mr. Poth): Have you had experience with tent gantline blocks before?

A. Yes, sir. [84]

Q. Over how long a period of years?

A. Oh, practically all the time I've been longshoring.

(Testimony of Robert L. Peters, Jr.)

The Court: State in words how many years, about.

A. Well, I'd say roughly about twenty-eight years.

Q. (By Mr. Poth): And when you were in the Navy did you have any particular duties that required you to have experience with tent gantline blocks?

A. Yes, sir. I was stevedore officer in the Navy.

Q. And where did you serve in the Navy?

A. In the South Pacific, Seabee Battalion.

Q. And what were your particular duties as stevedore officer?

The Court: With respect to gantline blocks.

Q. (By Mr. Poth): With respect to gantline blocks.

A. I was in charge of all of the rigging on all of the ships that discharged at Manus Island, discharged——

The Court: Will you spell the name of that island, please? A. Manus, M-a-n-u-s.

The Court: Is that in the Southwest Pacific?

A. It's in the Admiralties.

The Court: Where?

A. Admiralty Islands. [85]

The Court: Where are they?

A. That's the Southwest Pacific.

The Court: You may inquire.

Q. (By Mr. Poth): And did you observe any tent gantline blocks fall while you were in the Navy?

(Testimony of Robert L. Peters, Jr.)

A. Yes, just one that I know of.

Q. And have you observed any tent gantline blocks fall since you've been out of the Navy and been working in a civilian capacity?

A. Yes, I have.

* * * * *

Q. (By Mr. Poth): Well, I might ask you, are you familiar with the causes of tent gantline blocks falling? A. Yes, I am.

Q. And what are those causes?

A. Well, there's several causes.

Q. What are they?

A. Well, one, a strap similar to this could get pinched in the block. Another thing, it could chafe when the boom is topped up into the sockets or laid down in the sockets, it could be laying under the boom so that when the boom is working all the time it could chafe through [86] there at any given spot.

Q. Would that be while the vessel is at sea?

A. Yes, mostly, due to chaffing.

Q. And what other causes have you experienced and observed of tent gantline blocks falling?

A. Well, I have seen one fall when we just started to raise a tent, a hatch tent; by just pulling the rope through the block it just fell right onto the deck, because it was rusted completely through.

Q. Now, did you have occasion to observe the tent gantline block that fell on the morning of the 15th of July, 1956? A. Yes, I did.

(Testimony of Robert L. Peters, Jr.)

Q. And what was its condition as to the strap as you observed it?

A. Well, this end of the strap here was completely rusted through. I broke the rusted ends off with my fingers, and it had no core here at all in the block, in the strap. The core was all pulverized. It just fell apart.

Q. Does that strap there have the same appearance as the strap that you saw aboard the P & T Adventurer? A. No, it don't.

Q. How is it different, if it is different?

A. Well, this strap here has a core, a solid core I'd say, and the ends of this strap here have been beat or chiseled or something, and there's no rust at all on [87] them that I can see.

Q. All right. Please describe the ends of the wires as you see them there.

A. As they are here now?

Q. As they are there now.

A. Well, they look to me like it's been chopped off or beat with a hammer or something.

Q. Why do you say that?

A. Well, just by the look of them.

Q. Well, tell us——

A. If the strap was rusted through it wouldn't be like this, you would see rust all the way through it here and you would be able to break them off. This is all live wire. There's nothing dead to this strap at all.

Q. All right. Describe the ends there, the actual appearance of the ends, the shape of them.

(Testimony of Robert L. Peters, Jr.)

A. Well, they are jagged here and they are shiny. I don't see no rust on them, compared to the strap that I looked at that I threw overboard.

Q. You mentioned that they look as if they had been pounded. What evidence of pounding do you see, or hammering?

A. Well, as I say, they could have been hammered, or maybe that's caused from——

The Court: He wants you to describe the condition that you see there which makes you state your [88] attitude in the comment Counsel quoted from your former statement.

A. Well, this looks to me like it could be chafed. It could be chafed under a boom or something to cause that shinyness and that pounding on the end.

Q. (By Mr. Poth): Please, I want you to describe the exact shape of the ends of the different ones there. By "shape" I mean whether they are flattened, whether they are elongated.

A. Well, some of them are.

Q. Whether they are squarely broken off, just describe what you see.

A. Oh, some of them are flattened here and some are stranded, some are longer than others.

The Court: It is the individual piece of wire that you are looking at at the moment, not the composite of a number of pieces of wire that Counsel inquires of you concerning the condition as stated in his question. It is the condition as to a single piece of wire that is a component, the irreducible unit that is a component of the cable or the wire

(Testimony of Robert L. Peters, Jr.)

rope or whatever it is that is engaged with that block, Defendant's Exhibit A-4. [89]

* * * * *

Q. (By Mr. Poth): I believe you mentioned a flattened shiny end. Now would you take ahold of one of those flattened shiny ends at this point? Do you have one of them there? A. Yes, I do.

Q. Now describe exactly the appearance as you see it.

A. Well, the end is flattened down and it's shiny on this one strand of wire here, as though it might have been beat down.

Q. All right. What normally happens when wire breaks under strain in regards to appearance afterwards? Is it flattened and shiny like that?

A. No, it's not.

Q. Or is it broke off or elongated? Tell us exactly what it looks like in your experience when it's broke off by strain.

A. It would just be broken off and shredded. You wouldn't have no beat shiny ends like is on that wire there. [90]

Q. Now, the wire that you saw there that morning, did that have any beat shiny ends on it?

A. No, it didn't. It was completely rusted through. I broke ends of that off with my finger.

Q. Did you see the mate there that morning?

A. Yes, I did.

Q. Did you have any conversation with him?

A. Yes, I did.

(Testimony of Robert L. Peters, Jr.)

Q. And how long after the accident happened did he get there?

A. I would say just a few minutes, probably three or four minutes after the accident.

Q. And what conversation did you have with him?

A. The mate came down on the deck and he said, "Pete, what happened?" I said, "The tent gantline block fell." "Well," he said, "Where is it?" I said, "It's out there on the dock. I threw it out so the safety man could look at it," and he immediately went out on the dock and picked it up and brought it back aboard the ship.

Q. Now, where was the tent gantline line at that time when he came up to you?

A. It was laying on the deck at the after end of number two hatch.

Q. Was any part of it on the dock?

A. No, it wasn't. The hatch tender took it out of the [91] block and laid it on the deck. He just pulled the end right out of the block.

Q. Now, was any end of that attached anywhere?

A. No, it wasn't. We had let go of it to wing the boom in.

Q. Where was it secured originally?

A. It was secured on the bit on the bull rail.

Q. What else was secured on that bit, if anything?

A. The guy and the preventer.

Q. All right, and what was on—would you recall in what order they were secured on this bit?

(Testimony of Robert L. Peters, Jr.)

A. Well, normally you secure the guy first, then you put your preventer on and secure that, and then you slack the guy in to the preventer until you set the preventer tight, so the preventer would be on top of the guy and then your gantline would have a half a turn on top of that, just to hold her from swinging back and forth.

Q. Would it be necessary in order to let the preventer go that you first let go the tent gantline?

A. Yes.

Q. Why?

A. Because it's on top of it. When you put the preventer on the bit you take three or four turns and then you take a rope and you mouse the two top turns together, and if the gantline was on top of that you couldn't get that mousing off unless you let the gantline go. [92]

Q. Now, when this mate took this block did you see him put any mark or identification on it?

A. No, he just picked it up and carried it back aboard the ship, and that's the last I have seen the mate or the block.

* * * * *

Q. (By Mr. Poth): Well, I'll ask you in what ways could that flattening effect have occurred aboard the ship?

A. Well, as I said before, it could have been chaffing under the boom when the booms were secured, and another thing——

Q. Secured for what?

A. When they secure the booms to go to sea.

(Testimony of Robert L. Peters, Jr.)

Sometimes they stop them straight up into the air and set them into a collar, and their guy and preventer and this strap would be inside of that collar in back of the boom. They secure all the lashing right in with it. Other times [93] if they figure it's going to be——

Q. Just one minute on that. What is that collar made out of?

A. It's a steel collar. It opens up half way.

Q. And how could that collar cause that flattening effect?

A. Well, the boom would have a tendency to work in there when the ship is rolling and it would chafe back and forth on the edge of that collar.

Mr. Poth: I have no further questions.

The Court: You may inquire.

Cross Examination

Q. (By Mr. Howard): Mr. Peters, by whom were you employed on July 15, 1956?

A. Seattle Stevedore Company.

Q. And what was your title, your position?

A. Foreman, ship's foreman.

Q. Ship's foreman, otherwise known as a stevedore foreman?

A. Stevedore foreman, yes, sir.

Q. And exactly what was the extent of your duties as stevedore foreman?

A. My duties as a stevedore foreman is to see that the gangs are properly placed in the hatches,

(Testimony of Robert L. Peters, Jr.)

that the gear is rigged in a proper manner, the ship is uncovered in a safe and proper manner and the proper handling of [94] discharging and loading of the cargo, of any types of cargo.

Q. All of that relates to operations performed by longshoremen aboard the ship?

A. Yes, sir.

Q. And all of the longshoremen employed aboard the ship would be acting under your supervision and direction as stevedore foreman?

A. Well, not all of them, because I believe that night there were three foremen on there.

Q. Well, all of them at this hatch, let us say.

A. Yes, that would be true.

Q. At Hatch No. 2? A. Yes.

Q. In other words, you were in charge of the rigging and the trimming of the booms, and so forth, at that hatch?

A. When we start the ship.

Q. When you start it? A. Yes.

Q. And I think you mentioned in describing your duties that you had to be satisfied that everything was in a proper condition to go ahead with your work? A. That's right.

Q. And did you do so?

A. Well, I did not come aboard this particular ship the [95] night that the gangs first started and rigged the gear I was working a ship on the opposite side of the dock.

Q. I see.

(Testimony of Robert L. Peters, Jr.)

A. And I came aboard this ship the night that the ship finished.

Q. That was the first night, then, that you had worked on the ship? A. Yes, sir.

Q. And as I understand, then, you didn't check to see if the gear was in proper condition?

A. Yes, I did. I always check the gear when I come aboard.

Q. And were you satisfied with the condition of the rigging? A. Yes, I was.

Q. Now, you knew Mr. Cordray before this accident, did you not?

A. Yes, I knew him as an employee on the waterfront.

Q. What position did he occupy that night or early that morning?

A. He was the dock foreman.

Q. And you were the stevedore foreman on the ship and Mr. Cordray was the dock foreman, is that correct? A. That's right, yes, sir.

Q. And what duties did Mr. Cordray have as distinguished from your duties as a stevedore foreman? A. What duties does he have? [96]

Q. Yes.

A. He has charge of the bull drivers. They usually work one bull driver to each hatch who picks up the cargo when we set it on the dock and takes it into the shed and stacks it in piles.

Q. In other words, all the duties that Mr. Cordray had to perform related to the handling and the

(Testimony of Robert L. Peters, Jr.)

movement of the cargo on the dock, is that not correct?

A. Well, no, he has other duties, too. He has duties of putting steel cars under the hooks when we want them.

Q. That's on the dock?

A. On the dock, yes.

Q. Let's put it another way, Mr. Peters. Did Mr. Cordray have any duties or responsibilities in connection with the handling or movement of cargo off the ship?

A. Yes.

Q. Aboard the ship?

A. Yes.

Q. And what duties were those?

A. Well, when the cargo comes from the ship to the dock, that's his duty to take care of it. He has to know——

Q. On the dock?

A. Yes, to move it on the dock, but he has to know what is coming out of that certain hatch at a certain time to coordinate the movement of the cargo in these steel cars [97] that we use.

Q. I understand, but what I want to be sure I understand also is that Mr. Cordray had no duties or responsibility in connection with the work being done by longshoremen employed by Seattle Stevedore Company working aboard that vessel that night.

* * * * *

A. His duties were on the dock and also to get these cars put under the hook, but he was not in

(Testimony of Robert L. Peters, Jr.)

complete charge of the foreman working aboard the ship in the holds. That was my ship.

Q. (By Mr. Howard): As a matter of fact, Mr. Cordray was employed by Olympic Steamship Company?

A. That's right.

Q. The dock operator, and you were employed by Seattle Stevedore Company?

A. That's right.

Q. A different employer?

A. That's correct.

Q. Did Mr. Cordray have anything at all to do with the trimming and the rigging of the cargo-handling gear aboard the ship? [98]

A. No, sir.

Q. Or did he have anything to do with directing the longshoremen down in the hold as to how they would bring that cargo out?

A. No, sir.

Q. Or the hatch tender or the winch driver who would be handling the cargo up on deck?

A. No, sir.

Q. Or the sling men—who are the sling men, incidentally?

A. The sling men are the two men that work with the gang on the dock at each hatch.

Q. They are also employed by Seattle Stevedore Company, are they not?

A. They belong to that gang that's working in the hatch.

Q. That's right, and they are under your supervision as stevedore foreman?

A. That's right.

Q. What do they do, incidentally, Mr. Peters?

(Testimony of Robert L. Peters, Jr.)

A. They land and load all of the cargo coming off or going on. If it's loading steel, they sling it up and hook onto it onto the hook and we hoist it in. If it's coming out, they land it on the dock and send the boards back in again.

Q. Let's just limit this now to cargo coming off the ship. That's what we're concerned with, cargo coming off the [99] ship. A. All right.

Q. When the cargo comes off the ship it is lifted by the ship's cargo-handling gear, is it not?

A. That's right.

Q. And it is brought over by the cables, slings around the pallet boards of cargo, and it is deposited on the apron of the dock, is it not?

A. That's right.

Q. And then what do those sling men do?

A. They let go of it.

Q. O. K.

A. They take the slings off, or straps or rope slings or whatever it may be, and let go of it. If they are using boards, they let go of the board and they hook up a new board empty and send it back in again.

Q. And all of that is done by longshoremen under your employment? A. That's right.

Q. Mr. Cordray has nothing to do with that, does he? A. No.

Q. All right. Now, you spoke yesterday in your testimony about the meaning of the term "first place of rest". That is a technical term, is it not,

(Testimony of Robert L. Peters, Jr.)

that is used in connection with the determination of rates, and so forth? [100]

A. Well, it's a little technical, but I think it more or less comes under the truckmen's union.

Q. Yes.

A. They have something to do with it. The first place of rest is where it's taken off of the boat on the dock.

Q. Yes. A. That's the proper——

Q. Mr. Peters, in reality the first place of rest of that cargo when it comes out of the hold of the ship is where it is deposited on the dock while still attached to the ship's cargo-handling gear, is it not?

A. No, that's not true.

Q. Does the pallet of cargo not stop movement at that point?

A. Yes, it stops movement.

Q. And that is where the stevedores' responsibility ends in connection with the cargo, is it not?

A. No, no, no.

Q. When the slings are detached? When does the stevedores' responsibility end?

A. At the first place of rest on the dock when the cargo is taken—the cargo is landed from the hatch onto the dock.

Q. Yes.

A. It's picked up by the bull driver and taken into say the middle of this room and stacked up five or six boards [101] high.

Q. Now, Mr.——

A. Maybe two days later it's taken and moved

(Testimony of Robert L. Peters, Jr.)

fifty feet up forward and taken off of the board and placed on the dock. That's the first place of rest.

Q. But did the Seattle Stevedore Company, your employer, at the time of this accident do the work from the time that pallet or cargo board was brought over the side of the ship and comes to rest on the dock? Does Seattle Stevedore Company do any more work with that cargo?

A. Well, at times they do. Sometimes they do the dock work, too.

Q. I'm talking about July 15, 1956, at Pier 48 in Seattle.

A. The Olympic Steam had the dock that night.

Q. So that your responsibility with respect to that cargo ended at that time, did it not?

A. No, I wouldn't say that. The stevedore company's responsibility don't end when it touches the dock. They are still responsible for that cargo until it's taken off of the boards.

Q. Well, until——

A. They may sublet that to Olympic Steam or to John Jones or anybody else to do that for them.

Q. Do you know what the arrangement was at that time?

A. No, I don't know what the arrangement was. I know that [102] the Olympic Steamship Company hired the dock bull drivers, I know that.

Q. Yes, and they were doing the work from the time the cargo reached that point, where the slings deposited it on the dock, they did the rest of the work, did they not?

(Testimony of Robert L. Peters, Jr.)

A. From there on, yes.

* * * * *

Q. (By Mr. Howard): At the time this load of cargo was brought over the side of the ship and landed on the dock, what would the sling men do with respect to the cargo?

A. When we were taking a load out of the ship?

Q. Yes.

A. They would let go of it, as I say, if it was on boards, and hook on another empty board and send it back in.

Q. Now, these lift truck drivers or bull drivers that you referred to, who were they employed by?

A. Olympic Steamship.

Q. I believe you testified yesterday, Mr. Peters, that it was customary for dock foremen to come aboard a ship [103] such as the P & T Adventurer.

A. Yes, it is.

Q. Now I'll ask you, Mr. Peters, if it isn't also customary for shipyard repairmen to come aboard the ship?

A. Yes, it is.

Q. As for example employees of Todd Shipyards or Puget Sound Bridge and Dredge?

A. They do it all the time.

Q. Yes, and from — you've been on the waterfront many years, haven't you?

A. Yes, sir.

Q. It is also customary for Customs officers or Immigration officers to come aboard the ship from time to time, is it not?

A. At all times they do.

Q. Yes. And it's not uncommon for representa-

(Testimony of Robert L. Peters, Jr.)

tives of the cargo interests to come aboard the ship from time to time, isn't that true?

A. That's right.

Q. Do surveyors come aboard sometimes?

A. That's right.

Q. For what purpose?

A. To survey the cargo and see if it's properly stowed.

Q. To look at the cargo and see how it's stowed, isn't that right? [104] A. That's right.

Q. I'll ask you if it's not also common practice for guests of the officers or some of the crew members to come aboard from time to time?

A. They're not supposed to, but they do.

Q. They do come aboard. Is it also——

A. If they happen to get by the watchman.

Q. Is it also a common practice for deliverymen to deliver supplies, perhaps bring supplies or materials aboard the ship?

A. No. That's delivered to the dock, period.

Q. Then the longshoremen take over?

A. That's right. Sometimes the sailors take over.

Q. Sometimes the which?

A. The sailors take over and load it.

Q. The seamen. Suppose someone had just a little package of some kind; they might deliver that right aboard the ship, wouldn't they?

A. They'd come to the gangway and give it to the watchman. He's not allowed aboard the ship.

Q. Suppose someone representing a ship supply outfit, Sunde & d'Evers, or some meat company or

(Testimony of Robert L. Peters, Jr.)

somebody like that came down, they would be allowed aboard the ship, would they not?

A. No, I don't think they let them aboard the ship. [105]

Q. Do they talk with the ship's steward?

A. I think they talk with the steward out in the office on the dock.

Q. Oh. Now let's get to this dock office. What office are you referring to?

A. Oh, there's several offices on the docks there.

Q. Is there an office that you use on the dock?

A. No.

Q. Is there an office there with a phone provided and a desk, and so forth, that you occasionally use?

A. There is an office that can be used, yes.

Q. Who does use that office?

A. Well, I've seen checkers use it. Some of the foremen use it to write their time in.

Q. Some of the dock foremen use it?

A. Some of the dock foremen use it, yes.

Q. Some of the stevedore foremen use it too, don't they?

A. That's right.

Q. Sometimes the supercargo uses it?

A. Yes.

Q. As a matter of fact that's the purpose of the office, is to have a place where they can meet together to exchange their instructions and to coordinate their activities, isn't that true?

A. Well, they have to have some office, yes.

Q. Yes. Where is that office located, incidentally?

(Testimony of Robert L. Peters, Jr.)

A. Well, on Pier 48 there's one, two, three of them. There's two just inside of the main door, and there's one about half way down the dock.

Q. Had you used that office on the night that this accident occurred? A. No, I hadn't.

Q. You had never been out there in that office that night? A. No.

Q. What time of the night or morning did this accident occur, Mr. Peters?

A. I'd say about ten minutes of five.

Q. And at that time you were at number two hatch on the deck of the ship in charge of that particular operation, were you? A. That's right.

Q. That is the swinging in or the winging in of the boom? A. Yes, sir.

Q. You mentioned this afternoon that you had talked with the mate after this accident. Do you know the name of the mate?

A. No, I don't know his name, no.

Q. Did you know a Captain Jack Harris?

A. No, I don't recall that name at all.

Q. Did you see a man here this morning that testified before [107] you by the name of Harris?

A. No, I didn't see him.

Q. You don't know whether that's the man you refer to?

A. I didn't see him in the courtroom.

* * * * *

Q. (By Mr. Howard): Was the mate that you talked to one of the regular mates of the ship or was he a relief or night mate?

(Testimony of Robert L. Peters, Jr.)

A. No, I believe he was the regular mate.

Q. I see.

A. He's been on them ships quite some time.

Q. Do you recall in your conversation with this mate having told the mate that you were not an eye witness to the accident? A. Pardon?

Q. Do you recall having told the mate that you talked with immediately following the accident that you were not an eye witness, that you did not see the accident?

A. No, I did not tell him that because I was standing right there when it happened.

Q. Now, yesterday, Mr. Peters, I understood you to testify [108] that the hatch tent gantline was not usually secured on the ship.

A. That's right.

Q. Do I understand your testimony to be that it was secured on this occasion?

A. When the gantline is being used to hang a tent, you secure it.

Q. Well, this——

A. When you don't use it to hang a tent you might just take a single wrap around a bit or anything to hold it from swinging in the way of the fall.

Q. All right. Now let's——

A. When I say "secured", I mean made fast.

Q. All right. Let's refer to this night of July 14th and 15th, the morning of July 15th. Was the hatch tent gantline at number two on the starboard

(Testimony of Robert L. Peters, Jr.)

boom secured or wrapped around anything, made fast in any way?

A. Yes, it was made fast on the bit on top of the preventer.

Q. I see. And when was it released from there?

A. When was it relieved?

Q. Released.

A. Released. When we went to wing the gear in.

Q. Who did that? A. The stevedores.

Q. Who? [109]

A. Well, I couldn't tell you his name. That's the stevedore's job that works in the hold, to come on deck and let go of them lines and hook the cargo hook in on the offshore side so that they can wing the boom in.

Q. I take it you——

A. And one man stands by that rope to slack it off.

Q. You don't know who did it?

A. No, I don't. I couldn't tell you exactly which man done it, no.

Q. Did you see him do it?

A. Yes, I did. I told him to do it.

Q. And how long was that before the block fell?

A. Well, the block didn't fall until after the boom had swung in over the side of the ship.

Q. Was there any strain on that hatch tent gantline before it was released from this point that you claim that it was secured on the bit?

A. No.

Q. No strain. Was there any slack in it?

(Testimony of Robert L. Peters, Jr.)

A. Yes, there was a little slack in it. It wasn't set right up tight, it just had a couple of turns around the cleat.

Q. There had been no hatch tent used there that night, had there?

A. Not to my knowledge—not that night there wasn't, no. [110] They might have used them before that.

Q. Why was it secured around that bit if there was no hatch tent in use?

A. To keep it out of the way of the fall. That hangs directly under the fall, and if you don't pull it back to the side or forward or some place and take a turn around so it will stay there, it will chafe on that fall. The rope itself hanging down, the two parts will be in the way of the cargo coming up.

Q. Did you ever see around the time of this accident, did you ever see the lower part of the hatch tent gantline wrapped around a shroud?

A. No, sir, it was not wrapped in a shroud.

Q. After the accident did you check to see if it was wrapped around a shroud?

A. That's right.

Q. And you didn't see that?

A. The hatch tender pulled it out of the block and laid it on the deck so that I could throw the block overboard.

Q. Now, at the end of Mr. Poth's examination you described a flattening effect on this wire, and then you testified that might have been caused by chafing under the boom on the steel collar when the

(Testimony of Robert L. Peters, Jr.)

boom is topped, but I understand that you checked that block and piece of wire immediately following the accident and you didn't observe [111] that condition, did you?

A. No, I did not. The wire I checked was all rusted completely through.

Mr. Howard: That's all.

The Court: Anything further?

Mr. Poth: No, I believe that's all.

* * * * *

(Witness excused.)

MARCIA INOUE

called as a witness in behalf of plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Poth): Will you state your name, please? A. Marcia Inouye.

Q. And where do you live?

A. 326 18th Avenue.

Q. And what is your occupation? [28]

A. Assistant medical record librarian at Providence Hospital.

Q. And did you bring with you the hospital bill for Jack V. Cordray, the plaintiff in this action, for hospitalization in 1956?

A. Yes, I have it here. [29]

* * * * *

(Testimony of Marcia Inouye.)

(Plaintiff's Exhibit No. 1 for identification was examined by Mr. Howard, then handed to the witness.)

Q. (By Mr. Poth): Does that bill contain a true and correct statement of all the charges made by Providence Hospital to Jack V. Cordray for his said hospitalization? A. Yes, it is.

* * * * *

Mr. Poth: I'll offer it at this time.

Mr. Howard: No objection.

The Court: Admitted.

(Plaintiff's Exhibit No. 1 for identification was admitted in evidence.)

* * * * *

Q. (By Mr. Poth): What is the amount of that bill?

A. The hospitalization from August 28, 1956 to September 15, 1956 amounted to \$426.25, and there was a physiotherapy treatment dating from September 17, 1956 to January 1st, 1957, which was a balance of \$159.50.

The Court: What is the total of that bill? [30]

A. The total would be \$585.75.

* * * * *

GLEN J. SNODGRASS

called as a witness in behalf of plaintiff, being first duly sworn, was examined and testified as follows:

The Court: State your name clearly and distinctly so all present can hear you.

(Testimony of Glen J. Snodgrass.)

A. Glen J. Snodgrass. [31]

* * * * *

Direct Examination * * * * *

Q. (By Mr. Poth): What is your occupation?

A. Office manager of the Swedish Hospital.

Q. In pursuance of your duties as office manager do you have under your control the records relating to the charges made by Swedish Hospital to Jack V. Cordray for hospitalization in the year 1956?

A. Yes, I do.

Q. Do you have that bill with you?

A. Yes. [32]

* * * * *

(Plaintiff's Exhibit No. 1 for identification was examined by Mr. Howard, then handed to the witness.)

Q. (By Mr. Poth): Does that bill contain a true and correct statement of all the charges made Jack V. Cordray by Swedish Hospital in 1956?

A. Yes, it does.

Mr. Poth: I'll offer it in evidence.

Mr. Howard: No objection.

The Court: Admitted.

(Plaintiff's Exhibit No. 1 for identification was admitted in evidence.)

Q. (By Mr. Poth): What is the amount of the bill?

A. \$96.45.

(Testimony of Glen J. Snodgrass.)

Q. And what period of hospitalization does it cover in time?

A. From July 15th to July 17th, 1956. [33]

* * * * *

The Court: The plaintiff's case in chief is interrupted to accommodate a witness for the defendant, and this witness now being called is called by the defendant to testify in the case in chief of the defendant. Will this witness come forward and be sworn.

JACK HARRIS

called as a witness in behalf of defendant, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Howard): Will you state your full name and address, residence address, please?

A. My name is Jack Harris.

Q. Your address?

A. 2079 17th Avenue, San Francisco.

Q. What is your employment at the present time, sir?

A. I'm Master of the steamship P & T Explorer.

Q. Where is that ship located now?

A. At Vancouver, Washington.

Q. And when is it due to sail? [34]

A. Three o'clock this afternoon.

The Court: The name is Explorer?

A. Explorer, yes, sir.

(Testimony of Jack Harris.)

Q. (By Mr. Howard): How long have you been employed by Pope & Talbot, Inc.?

A. Since 1942, which is fifteen years.

Q. And do you hold any licenses issued by the Coast Guard? A. Yes, sir.

Q. If so, what?

A. As Master of steam, any ocean, any tonnage.

Q. On July 15, 1956, will you state what your employment was as of that date?

A. I was second mate on the steamship P & T Adventurer.

Q. And where was that ship located on July 14th and July 15th? A. At Pear 48, Seattle.

Q. Do you recall an accident involving a Mr. Cordray which occurred on the early morning of July 15th? A. I do.

Q. Were you on duty at the time?

A. No, I was not on duty. I was called I believe at 4:30 a.m. as we were to shift the ship to Olympia at 5:00.

Q. What were you doing?

A. What's that?

Q. What were you doing at that time? [35]

A. Well, I got up and I had started the gyro compass the night before and I went in to check the gyro compass. Then I went down to have my cup of coffee.

Q. Where was the ship located at the time?

A. At Pier 48 in Seattle.

* * * * *

(Testimony of Jack Harris.)

Q. (By Mr. Howard): What if any operations were being performed on the ship in the early morning of July 15th?

A. They were discharging cargo.

Q. And where was the ship located?

A. Pier 48 in Seattle.

Q. Do you know who operates Pier 48?

A. I believe it's Olympic Steamship Company.

Q. Who was performing the stevedoring work on the ship at that time?

A. Seattle Stevedoring Company. [36]

* * * * *

(Chief Mate's Log was marked Defendant's Exhibit No. A-1 for identification.)

The Clerk: Defendant's Exhibit No. A-2.

(A photograph was marked Defendant's Exhibit No. A-2 for identification.)

The Clerk: Defendant's Exhibit No. A-3.

(A photograph was marked Defendant's Exhibit No. A-3 for identification.)

Q. (By Mr. Howard): Can you identify the book in front of you marked for identification as A-1?

A. Yes, sir. It's——

The Court: That is sufficient. Ask him another question.

Q. (By Mr. Howard): What is it?

A. It's the rough log book—no, this is the smooth log book.

The Court: Of what department of the ship, if any?

(Testimony of Jack Harris.)

A. The deck bridge log, or Chief Mate's Log as it is called.

Q. (By Mr. Howard): Does it include the period for July 10 to 15, 1956?

A. Yes, it does.

Q. And when are the entries made in that log book? [37]

A. Usually as they go along, usually every two or three hours, four hours. If anything unusual happens they are usually made right after the occurrence.

Q. By whom are the entries made?

A. By the mate on watch at the time.

Mr. Howard: I offer Exhibit A-1.

Mr. Poth: I have no objection.

The Court: It is admitted.

(Defendant's Exhibit No. A-1 for identification was admitted in evidence.)

[See pages 453-5.]

Q. (By Mr. Howard): Is there an entry in that Exhibit A-1 with reference to the incident involving the plaintiff, Mr. Cordray in this case?

A. Yes, there is.

Q. Will you turn to that, please.

The Court: If the place to which you do turn in response to this question has a page number, will you identify that?

A. Sunday, July 15, 1956.

Q. (By Mr. Howard): At what time does the entry appear?

(Testimony of Jack Harris.)

A. At about 4:50 a.m. It would be 0450. [38]

* * * * *

Q. (By Mr. Howard): That's 0450 a.m., is that correct?

A. Well, it doesn't say "a.m.", but "04"—the way we use it it's 0450.

The Court: What do you mean by that? Is it in the morning or afternoon or nighttime?

A. We use the 24 hour system.

The Court: I know, but what does that 0450 mean in so far as whether it is a.m. or p.m. or what it is?

A. It's a.m., sir.

The Court: Proceed.

Q. (By Mr. Howard): Now, handing you also what has been marked for identification as Defendant's Exhibits A-2 and A-3, can you identify those?

A. Yes, sir.

Q. And what are they?

A. They are pictures of the booms of the Adventurer. This one, A-2, is a picture of the number two starboard boom, and A-3 shows looking aft from the forecastle from number one hatch, looking aft on the starboard side.

Q. Are those pictures of the ship and of the boom and gear involved in this accident?

A. Yes, sir. [39]

* * * * *

Q. (By Mr. Howard): Do you know when these pictures were taken, Captain Harris?

(Testimony of Jack Harris.)

A. I believe they were taken the day following the accident. I'm not—I was there when the photographer was taking the pictures, but my mind is hazy whether it was the afternoon in Olympia or the next day. I believe it was the next day on Monday.

Q. Will you state whether or not these pictures include any of the boom or the gear that was involved in this accident?

A. Yes, I would say so, especially in A-2, where I can locate the boom as being number two starboard boom.

Q. And where were these pictures taken?

A. In Olympia.

Q. At Olympia.

Mr. Howard: I offer these exhibits. [40]

Mr. Poth: Your Honor, I'm going to object to them, your Honor. This witness hasn't testified—he's not a photographer.

The Court: The objection is sustained.

(Defendant's Exhibits Nos. A-2 and A-3 for identification were refused.)

Mr. Howard: May I inquire of your Honor on what ground the objection is sustained?

The Court: The Court declines to state. You may proceed. The Court regards the authenticating proof as insufficient.

Q. (By Mr. Howard): Captain Harris, how did you first learn of this accident?

(Testimony of Jack Harris.)

A. I was told by the night relief mate who was on duty at the time. I believe it was shortly after five o'clock.

Q. And what did you do upon learning of the accident?
A. What did I do?

Q. What did you do upon learning of the accident?

A. I went out on deck to see if I could find out what caused the accident or just what the accident was.

Q. Was the injured man, Mr. Cordray, still on the ship?

A. No. No, he had gone to the—had been taken to the hospital.

Q. Were any of the longshoremen around at that time?

A. There was longshoremen at number three hatch, which was [41] still working cargo.

Q. And where did this accident occur?

A. At number two hatch. The boom—

Q. Were there any longshoremen at that location?
A. No, sir.

Q. Now, did you find any part of the gear involved in this accident on or around the vessel?

A. I saw the block that fell lying on the dock close to the shed. It was on the dock; not on the vessel, on the dock.

Q. And what did you do with respect to that piece of gear?

A. I went on the dock and brought it aboard

(Testimony of Jack Harris.)

ship and took it up to the spare room and locked it up.

Q. And thereafter what did you do with it?

A. I gave it to I believe Mr. Soriano in Olympia the next day. [42]

* * * * *

(A gantline block was marked Defendant's Exhibit No. A-4 for identification.)

The Court: It is marked for identification A-4. Will Counsel spell for the convenience of the jury and the Court the word "gantline"? [43]

* * * * *

Q. (By Mr. Howard): Can you identify the item which is placed before you as Identification A-4? A. Yes, sir.

Q. What is that?

A. Well, that was a tent gantline block from number two boom, number two starboard boom.

Q. Off what ship? A. P & T Adventurer.

Q. Is that the piece of gear that you referred to that you recovered off the dock?

A. Yes, sir, it is.

Q. And is that a piece of the gear that was formerly attached to the ship the P & T Adventurer? A. Yes, sir.

Mr. Howard: I offer that in evidence.

* * * * *

(Defendant's Exhibit No. A-4 for identification was admitted in evidence.) [44]

The Court: You may cross examine later concerning the matter.

(Testimony of Jack Harris.)

Q. (By Mr. Howard): Captain, would you describe for us exactly what a hatch tent gantline is and how it is used aboard a ship such as the P & T Adventurer?

A. Well, in a case of rain we have these hatch tent gantlines on the head of the booms to hold a hatch tent, a tent over the hatch to protect the hatch from the rain. It's a simple—that's what they are used for.

Q. And how many hatch tent gantlines are used to each hatch? A. Two.

Q. And how many tents would be used to each hatch or hold of the ship?

A. Just one on that particular hold.

Q. From what point would the hatch tent gantlines be suspended?

A. From this block from the head of the boom. This strap is about four feet long hanging down from the head of the boom.

Q. What type of material is in the strap that you refer to? A. It's steel, plow steel.

Q. And the size, approximately?

A. Five-eighths inch diameter.

Q. And the length of the strap in its complete full condition? [45]

A. Approximately four feet.

Q. And the upper part of that is around the tip of the boom?

A. There's an eye, the upper part has an eye that fits over the head of the boom.

(Testimony of Jack Harris.)

Q. And what is below the block that you have before you?

A. We have a Manila, about three and a half inch Manila line rolled through the block.

Q. And where does that extend to?

A. Down to the deck.

Q. How is the hatch tent raised then?

A. Well, it's raised by attaching one end of this Manila line to the hatch tent and hauling it up with the hauling part.

Q. Now, is that a regular part of the ship's gear?

A. Yes, we generally carry them when we have general cargo.

Q. While vessels such as the *Adventurer* are on the Pacific Coast at various dispatching ports where are those straps and gantline tents located or maintained?

A. Well, the hatch tents themselves, the stevedoring company furnishes them. We just have the gear handy to put them up.

Q. When are they inspected or overhauled by personnel from the ship?

A. Well, usually all wire on the ship is slushed down every [46] trip when the booms are down, usually on the westbound passage on the inter-coastal run.

Q. When you arrived on the deck of the *P & T Adventurer* after receiving a report of an accident on the morning of July 15th did you make any observation as to where or how the lower end of the

(Testimony of Jack Harris.)

gantline was secured for this particular piece of gear?

A. The lower end of the gantline was secured, there were several turns taken around the shrouds.

Q. Now, what is a shroud, Captain?

A. Well, a shroud is a stay for the mast, to keep the mast steady.

Q. What is its purpose?

A. To stay the mast, to keep the mast steady.

Q. And where is it stayed from, between what points?

A. From a point up on the mast down to the deck.

Q. And how many shrouds are there to a mast?

A. There are about three as a rule.

Q. And the one that you refer to would have been located where, the lower end of the shroud?

A. The lower end of the shroud?

Q. Yes.

A. Over by—it's connected to a pad eye on the deck near the bulwarks.

Q. And the bulwarks are the rail of the ship?

A. Yes. It's on the deck, though.

Q. And where would that pad eye to which the lower end of the shroud was attached be located with reference to the side of the ship next to the dock?

A. Well, it's the outboard side. It's right next to the side or the outer shell of the ship on the deck.

Q. Now, where then was the hatch tent gant-

(Testimony of Jack Harris.)

line attached as you observed it after the accident?

A. They were wrapped around the shrouds with several turns.

Q. What part of the gantline was wrapped around the shroud?

A. The lower part of the gantline.

Q. And how many turns were on it approximately?

A. Oh, I'd say four turns around a couple of shrouds.

Q. And when did you make this observation?

A. Shortly after I was informed of the accident.

Q. Captain, how had the booms been rigged before this accident occurred in order to use the cargo-handling gear of the ship?

A. Well, we were starboard side to the dock, so the starboard boom was out over the dock, and the port boom would be a little to the port side of the hatch, a little outboard from the port side of the hatch, not straight up and down but out a little bit. Not over the side, though.

Q. Now, how far did this starboard boom extend out over the [48] side of the ship over the dock?

A. Well, I'd say about twenty feet.

Q. And at what angle would that be extended?

A. The boom?

Q. Yes. A. Oh, I should say sixty degrees.

Q. I'll ask you, Captain, if the angle of the boom would have been approximately the same as

(Testimony of Jack Harris.)

shown in Identification A-3 that has previously been before you?

A. As far as I can judge, yes.

Mr. Poth: Oh, just a minute. I believe your Honor refused the offer of A-3 and A-2 and now he's attempting to cross examine, I mean to examine this witness on exhibits which have not been admitted.

The Court: He has a right to ask if the contents of an exhibit are true and correct, and that is in effect the meaning of this question. The sight of the thing inquired about is not before the jury. The objection is overruled.

Q. (By Mr. Howard): I'll ask you also, Captain, if in Identification A-3——

Mr. Howard: Which I ask be passed to the witness, and A-2 also.

The Court: That will be done.

(The exhibits were handed to the witness.)

Q. (By Mr. Howard, continuing): ——if there is apparent in the pictures any other hatch tent gantlines intact such as were used on this vessel at the time of this accident?

A. Yes, I believe I can make out one, the number three forward starboard boom.

Q. Will you state whether or not the hatch tent gantline that you refer to is secured at the lower end at any point aboard the ship?

A. It appears to be so.

Q. And where is it secured?

A. Well, that I just can't—it's not quite clear

(Testimony of Jack Harris.)

enough. It's down around the deck or on the rail.

Q. Captain, if the starboard boom is extended as you described it on the morning of July 15th and the hatch tent gantline is secured around the shroud as you have described it in your testimony, what would happen if the boom was swung in or wung in by the stevedores without releasing the lower part of the hatch tent gantline?

A. There would be a strain put on the hatch tent gantline, naturally.

Q. Incidentally, is the hatch tent gantline intended to be used in connection with the lifting or lowering of any cargo or loads of cargo? [50]

A. No, it has nothing to do with the handling of cargo at all. It's merely to hold the tent up.

Q. Is it intended for use in any way in connection with the swinging in or winging in or out of the cargo booms? A. It is not.

Q. What weight or strain is intended to be borne by the hatch tent gantline?

A. To hold the hatch tent in place.

Q. And the Manila part of that that you've referred to, what was the size of the Manila rope in that?

A. It was three and a half inch circumference.

Q. And as it was rigged on the morning of July 15th was there one or two thicknesses of that extending between the block and the deck?

A. There was two.

Q. Now, Captain, who performed the stevedoring operations, again?

(Testimony of Jack Harris.)

A. Seattle Stevedoring Company.

Q. Who would have the responsibility for trimming the booms at the completion of the discharging operations?

A. Well, the hatch boss or the walking boss, the stevedore walking boss.

The Court: I call Counsel's attention to the fact that he used the verb "would", w-o-u-l-d.

Q. (By Mr. Howard): Who did have the responsibility on the [51] morning of July 15th of '56?

A. The walking boss.

Q. By whom was he employed?

A. By Seattle Stevedoring Company.

Q. Did the members of the ship's crew participate in any way on the morning of July 15th in winging in the booms on number two hatch?

A. No, sir.

Q. What would be necessary to be done by the longshoremen in winging in the booms with respect to the hatch tent gantline?

A. Well, to let it go, slack it off.

Q. Had that been done as you observed it?

A. Evidently not as I observed it.

Q. Captain, did you have an opportunity to examine this wire strap, gantline strap, when you recovered it from the dock after the accident?

A. Yes.

Q. And where did it part with respect to the length of the wire strap?

A. I would say about two-thirds down from the

(Testimony of Jack Harris.)

top, I mean one-third from the top, two-thirds up from the block.

Q. Now will you describe its appearance at the point where it broke?

A. It was frayed quite a bit. It had parted with quite a [52] snap. It unraveled.

Q. By "frayed" what do you mean, or "unraveled"?

A. Well, each strand was—there were ragged ends of the strands or the wire.

Q. Was it as it now appears in Exhibit A-4?

A. Yes.

Q. And is that as it appears in the pictures which have been marked for identification as A-2 and A-3? A. Yes.

Q. And does the upper end of the strap that you have referred to appear the same in Exhibits A-2 and A-3 as it appeared from your observation of the gear on the morning of July 15th?

A. Yes, it does.

Mr. Howard: I again offer the pictures, A-2 and A-3. If it——

The Court: Just a minute.

Mr. Poth: Pardon?

The Court: Now you may make your statement.

Mr. Howard: If the objection made by Counsel goes to the fact that the photographer has not been called to identify the pictures, I'll be very happy to call the photographer from Olympia for that purpose, but I'm trying to obviate the neces-

(Testimony of Jack Harris.)

sity of calling a photographer from Olympia to do that. [53]

The Court: Counsel offering I believe and the Court had not at the time of this offer made at this time heard any objection.

Mr. Poth: Can I see the pictures?

The Court: They will be shown you.

(Brief pause.)

The Court: The Court wishes to rule. The Court feels that the ruling has been delayed long enough and I wish to announce the ruling. Defendant's Exhibit A-2 is now admitted, likewise Defendant's Exhibit A-3. Each of them is now admitted.

(Defendant's Exhibits Nos. A-2 and A-3 for identification were admitted in evidence.)

The Court: Proceed.

Q. (By Mr. Howard): Captain, referring to Defendant's Exhibit A-3, I will ask you whether there is a hatch tent gantline from another hatch appearing in the foreground of that photograph?

A. There appears to be so, yes, sir.

Q. And from what hatch would that appear to be?

A. That would be from number three forward gear.

Q. And where is the lower end of that hatch tent gantline secured?

A. Well, it appears to be secured either on the bulwark or on the deck. [54]

Q. In the immediate foreground in A-3 is there another hatch tent gantline or the lower portion

(Testimony of Jack Harris.)

of it visible in the foreground? A. Yes, sir.

Q. And where is that hatch tent gantline secured?

A. That's secured on the railing at the after end of the forecandle or number one hatch.

Q. And in what manner is it secured?

A. Well, it's wrapped around the railing there.

Q. Is it customary on ships of this type, Captain, to always secure the lower end of the hatch tent gantline at some point?

A. Yes, on the outboard side or the side you're working cargo from you have to get it back out of the way, just simply to get it out of the way from the——

Q. On the morning of July 15, 1956, did you observe the condition of the wire and the core of the wire in the portion of the strap that you recovered? A. Yes.

Q. Now A-4, Exhibit A-4.

A. A-4, yes.

Q. Will you state what you found the condition of the strap to be?

A. Well, it was in my opinion in fair condition. It wasn't new by any means, but it was in condition enough to [55] perform the work it was intended for.

Q. From your experience as a master and a mate on merchant vessels will you state whether or not you considered the strap, the wire in the strap, was in serviceable condition for use?

A. For its intended use, yes, I do.

(Testimony of Jack Harris.)

Q. And that intended use was——

A. To hold the hatch tent up.

Q. Captain, if there had been a deterioration or a wearing or a worn portion in the wire strap and it had broken because of that, what type of break would you find?

A. Why, I don't believe it would break with such a snap. I don't think the ends would be frayed quite as much.

Q. What did the frayed or separated portions of the wire indicate to you as you observed them on the morning of July 15th as far as the nature of the break?

A. Well, it had a severe strain put on it.

Q. Captain, have you checked the log book that is now in evidence as A-1 as far as the days preceding the accident that the ship was in Seattle, and will you do so and tell me whether the ship had to use hatch tents or whether hatch tents were used on any preceding day? [56]

* * * * *

A. No, there were no hatch tents used.

Q. What was the weather?

A. Well, the weather was partly cloudy and clear. There is no indication of rain.

Mr. Howard: You may cross examine.

A. Partly cloudy and cloudy, but no rain.

Mr. Poth: May I have that log book, please?

The Court: That will be afforded Counsel.

(Defendant's Exhibit No. A-1 was handed to Mr. Poth.) [57] * * * * *

(Testimony of Jack Harris.)

Cross Examination

Q. (By Mr. Poth): What time did that ship sail on the 15th?

A. What time did it leave Seattle?

Q. Yes.

A. Approximately six o'clock in the morning. It could have been—we were late. I know we weren't through discharging as early as anticipated. It might have been a little——

Q. What time did the stevedores knock off?

A. Well, I——

Mr. Howard: May the witness have the log book to refer to?

A. I'd have to refer to the log book.

Mr. Howard: For the times?

The Court: The witness may have access to it to answer questions if he needs such access.

A. Just glancing over there I believe it said the number two hatch knocked off at five.

Q. (By Mr. Poth): Do you need the log book?

A. Well, I don't remember those times in my head.

Q. Do you have to have it aboard ship?

A. Yes.

Q. You do? A. I do.

Q. I'll give it to you in just a minute. Now I'm referring to a page of the log—I'll read this to you—in which the accident to Jack Cordray is reported. Now, did you make that entry yourself?

A. I did not, no. That was made by the relief officer. I forget his name at the present, but——

(Testimony of Jack Harris.)

Q. Now I'll read this entry here to you. It says, "0630. Tested steering gear, whistle, telegraph, running lights. All in order. At about 0450 while longshoremen were swinging in two starboard booms the wire strap on tent [59] gantline parted. The block and part of strap fell, striking Jack Cordray, dock foreman, who was standing on deck opposite number two. Extent of injuries unknown. Man taken to hospital."

Now I will hand you this log book and ask you to point out to the Court and the jury any other reports contained in that log relative to the investigation of the cause of the accident and the happening of the accident other than what I have just read.

A. No, I don't believe there is any. I'll take a look. (Brief pause.) No, that's the only entry in the log pertaining to Cordray or the accident.

Q. And so these things that you have told us here today you did not at that time see fit to put in the log, is that correct?

A. Yes, that's correct.

Q. Now, you were second mate at that time?

A. Yes, sir.

Q. How long have you been employed by Pope & Talbot?

A. I joined my first Pope & Talbot ship in July of 1942.

Q. You've been with them ever since?

A. Ever since, yes, sir.

Q. You're a steady company employee?

(Testimony of Jack Harris.)

A. I'm a steady company employee.

Q. And they have now given you your own ship, is that right? [60]

A. Yes, sir.

Q. How many years did it take you to get that ship?

A. Well, I really didn't ask for it. In fact, for many years I wouldn't sail anything but second mate, but I had——

Q. Now, as an officer aboard a vessel I'll ask you whether or not it is not your duty to see that all of the gear, tackle and apparel and appurtenances and furniture of the ship are kept in good and seaworthy order?

A. That's usually the job of the chief officer, the chief mate, although if any of the other mates see anything that isn't in order, why we always tell him and he'll have it corrected.

Q. And you're supposed to keep things oiled and greased and painted, isn't that right?

A. The best we can under the conditions as they may be.

Q. Now, do you know when the last inspection of this tent gantline block was made?

A. No, I couldn't tell you that.

Q. Do you know when this tent gantline block was painted the last time prior to the time it fell down?

A. No, I do not.

Q. Now, as an officer aboard the vessel wasn't it your duty or the duty of all of the officers or some of them to see that the gear was constantly inspected and kept in [61] order?

(Testimony of Jack Harris.)

A. That's primarily the duty of the chief officer.

Q. Well, what's your duty as second mate?

A. The duty as second mate, out at sea I stand a sea watch, I stand a bridge watch, I'm in charge of the bridge for eight hours a day, and in port I work on deck under the supervision of the chief officer.

Q. So then it would be the duty of the chief officer to have this inspected and kept in order, is that right?

A. Yes, that's primarily his duty. But as I say, the other officers, if they see anything that's not right and needs changing, why we report to him and he sees that it's done.

Q. Do you think this is a good block?

A. Well, it shows a little wear.

Q. What type of splice is this?

A. I didn't examine it too closely. It's a Liverpool splice, I guess.

Q. Could you look at it for sure and tell me what type of splice it is?

Mr. Howard: May the record show that the witness does not have the exhibit in front of him to answer the question, your Honor?

The Court: Have you any objection to the witness stepping down there just a minute? [62]

Mr. Poth: Pardon?

The Court: Have you any objection to the witness stepping down there just a minute?

Mr. Poth: No, I do not, Your Honor.

(Testimony of Jack Harris.)

The Court: If you would like to, step down to Counsel table for just a minute, Captain.

(The witness stepped to Counsel table.)

The Court: Now will Counsel keep their places. I will return the witness to the witness chair. Now, then, avoid conversation. Ask him a question.

Mr. Poth: Yes.

Q. (By Mr. Poth): Do you know what type of splice that is?

A. That's called a Liverpool splice.

* * * * *

Q. (By Mr. Poth): Now, when you went out on the dock and you took this block and then you went up and locked it [63] up somewhere, where did you lock it up?

A. I locked it up in a spare room up on the officers' deck on the port side.

Q. Now, how do you know——

A. We used it for a pilot room and——

Q. Now, how do you know this is the same block?

A. It appears to me to be the same block. I didn't put my initials on it, but it appears to me that it's the same block.

Q. But you don't know for sure whether this is the same block? A. Well, I'm rather certain.

Q. Well, would you be more sure in saying that this is a block that looks like the block?

A. Well, I'd say that it is the block.

Q. How are you able to tell that it is the block? Did you initial it? A. I did not initial it.

(Testimony of Jack Harris.)

Q. And how long since you've seen a block like this?

A. Oh, I can look at one every day if I want to.

Q. I mean one that's broken like this.

A. Well, since I turned that over to Mr. Soriano, why I haven't seen one broken like that.

Q. When was it you turned it over to him?

A. The day following the accident. [64]

* * * * *

Q. (By Mr. Poth): Now, would you look at this strand right here——

A. Will you pardon me while I get my glasses?

Q. Get your glasses on.

* * * * *

Q. (By Mr. Poth) : Tell me what you see, if anything, on that strand.

A. It's a broken strand.

* * * * *

A. Well, this broken strand has a little rust around it, but there's some bright metal yet.

Q. (By Mr. Poth): Doesn't this appear to you to be smashed and sort of pressed together, the ends? A. Yes, it does.

Q. What would cause that? That isn't what you see when something breaks loose that pulls loose and snaps?

A. Well, it may have been the center core that didn't—— [65]

* * * * *

Q. (By Mr. Poth): Now referring to these other

(Testimony of Jack Harris.)

bright ends, I'll ask you whether or not they are not pounded flat on the end?

A. No, they are pretty sharp. I don't see that they are flat.

Q. Now look very closely.

* * * * *

Q. (By Mr. Poth): Look very closely.

A. I wouldn't say they are pounded flat.

Q. Well, they are flattened, aren't they?

A. They come to a fairly good point.

Q. Yes, a chisel edge.

* * * * *

Q. (By Mr. Poth): Showing you these strands here, I will [66] ask you to describe the actual appearance of the ends there, and I'll ask you whether or not those ends do not look like they have been pounded out flat?

* * * * *

A. I see no appearance of them being pounded flat. There's a little rust or grease on the outside of the wire, and the center of the wire is bright, but I don't see no evidence of being pounded flat.

* * * * *

Q. (By Mr. Poth): I'll ask you to look at these here also. Don't break the ends off.

A. No. I'll say the same answer, I don't see where they are pounded flat.

Q. Well, they are flattened, though, aren't they?

A. I don't know what you mean by flattened. Do you mean the wire is flattened? The wire is round.

Q. Well, the end. Just look carefully. Now, look-

(Testimony of Jack Harris.)

ing at this one, doesn't this have the appearance of having been sheared at some previous time?

A. Well, in my judgment it could have been, but a wire [67] could break that way just as well.

The Court: Now will Counsel ask the witness what he understands the meaning of the word "sheared" to be?

Mr. Poth: Yes.

Q. (By Mr. Poth): What do you mean by the word "shear"?

A. Well, cut. Cut like with a chisel, that's what I would say.

Q. Do you know where this block has been for the last year and three months? A. No. [68]

* * * * *

(Defendant's Exhibit No. A-3 was handed to the witness.)

Q. (By Mr. Poth): Now I'll ask you to look at Defendant's Exhibit A-3. A. Yes.

Q. Which purports to be a picture of a boom, is that correct? A. That's correct.

Q. And also the deck of a ship?

A. Yes, sir.

Q. Now, in that picture the boom is fairly well lowered but is extending outboard from the ship, is it not? A. Yes, sir.

Q. Now, that is not the normal way a vessel's gear in respect to its booms is carried while the vessel is at sea, is it? A. No, sir.

Q. How are those booms carried when at sea,

(Testimony of Jack Harris.)

referring now particularly to the P & T Adventurer?

A. With a deck load of lumber it's usually impossible to put the booms down. They are carried straight up, lashed against the cross tree, in a cradle up against the cross tree. With no deck load they are usually lowered down and cradled.

Q. Cradled in what? [69]

A. Well, they have a little cradle to fit the boom. On this particular——

Q. Is that called a boom rest?

A. A boom rest. On this particular number two on the Adventurer it rests on the mast house or the mast table at the after end of the hold.

Q. And what's up there on the mast house to hold the boom?

A. There's a cradle up there, a wooden cradle. The boom sticks a little bit over the mast house. The cradle would hit the boom about ten foot down from the head of the boom, the cradle on the mast house.

Q. And how long is this pennant from which the——

A. Approximately four feet.

Q. You wouldn't say the pennant could possibly be about eight feet, the pennant on the gantline block?

A. Eight feet, no, sir.

Q. Six feet?

A. No, I'd say approximately four feet.

Q. And where is it secured and made fast, the pennant of a gantline block?

A. The pennant, the eye on one end of the pen-

(Testimony of Jack Harris.)

nant is slipped around the head of the boom. [70]

* * * * *

(Defendant's Exhibit No. A-3 was handed to Mr. Poth.)

Q. (By Mr. Poth): Have you ever seen tent gantline blocks fall down when there was no strain on them? A. No, no.

Q. You've never seen that happen?

A. I never have.

Q. Have you ever seen them fall down with a tent on them?

A. Not with a—yes, I have with the rope, the Manila breaking, but not with the strap breaking, not with the wire strap breaking.

Q. What's the testing strength of the Manila rope? A. What size?

Q. The size that was on this gantline block, if this was the gantline block.

A. I would say about between four and five tons new.

Q. And what is the breaking strength of this wire here?

A. That's five-eighths inch wire. Twelve to fourteen tons, fifteen tons.

Q. That would be about four or five times the breaking strength of the rope, the Manila rope?

A. About four times. I'm talking about new material.

Q. Now, have you ever seen tent gantline pen-
nants or straps become injured in any way or be-
come faulty in any way? [71] A. No.

(Testimony of Jack Harris.)

Q. Is it ever necessary to replace one?

A. We replace them periodically. Just the action of the weather and elements will deteriorate them.

Q. Did you ever see one of them get smashed?

A. No.

Q. Or pinched? A. Not to my knowledge.

Q. Now, did you ever see one get caught in a boom rest? A. In a boom rest?

Q. Yes.

A. Not that I've ever noticed, although it would be possible where the rest is on the end of the boom, close to the end of the boom.

Q. It is possible to have them caught in a boom rest, is that right?

A. Yes, sir, if the boom rest or the boom rests towards the end of the boom, towards the blocks where the gear is, but in this particular case the boom rest is ten feet down from the end of the boom. It would be impossible in this particular case.

Q. You're sure this one is ten feet down?

A. Yes, on this particular ship.

Q. All right. When you have a deck load and you secure the boom in an upright position instead of fore and aft along [72] deck of the vessel or the boom rest on the house, how do you secure the boom when you top it up?

A. It's put in a cradle.

Q. You carry mostly lumber, is that right?

A. On an eastbound trip.

Q. Now, when you secure them in an upright position for sea, who does that work?

(Testimony of Jack Harris.)

A. The sailors.

Q. Who are the sailors employed by?

A. Pope & Talbot, or the steamship.

Q. Now, in an upright position the boom is cradled at the end, is it not, or very close thereto?

A. Oh, I'd say maybe five feet. I never measured it.

Q. And what's that cradle aloft made out of?

A. Steel, or an iron cradle, collar.

Q. Now, is it possible to catch this pennant in that boom rest? A. That would be possible.

Q. And could it possibly be chafed and injured while it's being carried up there?

A. That's—it could be possible in that case. It's according to how you secure your gear up there.

Q. Now, in all normal practice it is the duty of the crew under the supervision of the officers such as yourself to place those booms in their proper rests? [73]

A. The crew is strictly under the supervision of the chief officer. If he is not present, why then the next officer can handle the crew.

Q. Now, when this vessel came into port were her booms broke out of the rests?

A. When this vessel came into Seattle her booms were flying. They weren't—well, you know what I mean when I call it flying. They weren't secured, they were just flying up in the air with the runners crossed and the preventers—

Q. That's right, they had been taken out of their boom rests, is that right? A. Yes.

(Testimony of Jack Harris.)

Q. Now, whose job was it to do that? Was that done by the crew of the vessel?

A. That's done by the crew of the vessel.

Q. You still don't know where this has been for the last year and three months? A. No, sir.

Q. What is the weight of the Manila rope that went through here? A. The weight?

Q. Yes.

A. It was a three and a half inch circumference. Now, the weight of it, I don't know offhand what it would weigh. [74]

How many pounds a foot I wouldn't know offhand.

Q. What do you think it would weigh?

A. Oh, a pound and a half a foot, maybe.

Q. And how many feet long was it?

A. Approximately 45 feet.

Q. 45 feet——

A. Say eight fathom, 48 feet.

Q. So it weighs a pound and a half a foot, Manila rope, is that right?

A. That's my guess.

Q. That's your best estimate, a pound and a half a foot, and of course being that it went through this sheave here it would be double, is that right, so you'd have approximately ninety feet of rope, is that right? A. Yes.

Q. So the weight of the rope hanging on this would then be 90 times a pound and a half?

A. You'd just have as much rope according to the height of the boom. * * * * *

(Testimony of Jack Harris.)

Q. (By Mr. Poth): What would the approximate weight of the rope be, ninety feet of rope?

A. Well, I'd say 125, 130 pounds, 135 pounds.

Q. What type of winches did the P & T Adventurer have on her?

A. Electric winches.

Q. Were they operated on the double or on the single?

A. On the single.

Q. That is——

A. Single gear.

Q. All right. Was it rigged up for two winch drivers to drive or one winch driver would operate both winches?

A. One winch driver.

Q. You didn't see the accident happen?

A. No, sir.

Q. And when you got there everything had been done, is that right?

A. That's right.

Q. And was the boom winged in when you got there?

A. Yes, sir.

Q. And to what position was it winged in with respect to the railing of the vessel?

A. It was clear of the rail.

Q. Just clear of the rail?

A. Clear of the rail. I don't know how far in, but that's the general practice.

Q. Now, was the preventer made fast?

A. No. [76]

Q. Was the steam schooner guy secured?

A. Yes.

Q. Was the rope guy secured?

A. Yes.

Q. What was the preventer? How was that fixed?

A. That was just hanging there.

(Testimony of Jack Harris.)

Q. And you say you saw what had been you presumed to be the rope of the tent gantline slung over the shrouds, is that right?

A. One end of the tent gantline was out on the dock. It had been cut to free the block from it, and I took the tent gantline and hauled it on board, unfastened it from the shrouds and coiled it up.

* * * * *

Redirect Examination

Q. (By Mr. Howard): Would the winches be used in winging in the booms? A. Yes, yes.

Q. And who would drive the winches?

A. The winch driver. [77]

Q. And by whom are the winch drivers employed? A. The stevedoring company.

Mr. Howard: That's all.

The Court: Anything else?

Mr. Poth: No, Your Honor.

* * * * *

(Witness excused.) [78]

* * * * *

Mr. Poth: I'll call Mr. Gerst.

WALTHER GERST

called as a witness in behalf of plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Poth): Will you state your name, please?

(Testimony of Walther Gerst.)

A. Walther Gerst. The first name is spelled W-a-l-t-h-e-r, G-e-r-s-t. [112]

Q. And where do you live, sir?

A. 605 5th North, Seattle 9, Washington.

Q. And what is your occupation?

A. At present I am a rigger at Todd's Shipyard and Drydock Company.

The Court: Rigger?

A. Yes, sir.

The Court: Will you tell the jury, what is the ordinary work of a rigger at the Todd Shipyards?

A. Well, sir, there's several different things there. You may be working in the sail loft where you're splicing.

The Court: The sail loft, what is that? What are you doing there?

A. Splicing wire and rope.

The Court: What else as a rigger do you do at Todd's?

A. Well, you're hanging rigging up on the ship.

The Court: What is rigging? What is it you hang when you hang something up called rigging?

A. Well, it's according to what the job is, sir. You're liable to rerig the ship; that's putting topping, lifts, guys.

The Court: You mean tying ropes and putting [113] them in place in pulleys and fastening it at one end or the other or both ends as the work of loading and unloading the ship or as the work of bringing material aboard the object being repaired or built at Todd's progresses?

(Testimony of Walther Gerst.)

A. Yes, sir, and furthermore, if you're working down in the engine room you're setting up the rigging to take heavy machinery out of the engine room, and so on and so forth.

The Court: That is a mysterious word. What is a rigging in the engine room now that you would be setting up?

A. Well, you'd have to hang chain hoist.

The Court: Hang a chain hoist to a ceiling beam or something like that?

A. To beams or through holes through the beams or beam clamps. It's according to what operation you have to do, sir.

The Court: Yes. You may proceed.

Q. (By Mr. Poth): And have you been a seaman, gone to sea?

A. Yes, sir. I was chief boatswain for the Military Sea Transport Service, the Army Transport Service, several ships, ever since I've been fourteen years old.

Q. You've been sailing since you were fourteen?

A. Yes, sir. [114]

Q. How old are you now?

A. I will be fifty-four next August the 3rd.

The Court: Where were you born, Mr. Gerst?

A. Philadelphia, sir.

Q. (By Mr. Poth): How long have you been on the West Coast here?

A. Well, I came around on several intercoastal ships while I was a youngster, but to make my home

(Testimony of Walther Gerst.)

on the West Coast I'd say somewheres around '24 to '26, somewheres around in there, sir.

Q. 1924 to 1926?

A. Somewheres in there, yes, sir.

Q. How many voyages do you think you've made as a seaman aboard vessels?

A. Well, that would be hard to say unless I looked my discharges over, sir. Some of them might be lost. I lost some of them during the second world war that went down.

Q. Have you been around the world?

A. Oh, I'd say at least nine or ten times, sir.

Q. Now, in respect to rigging, tell us whether or not you ever taught rigging.

A. Yes, sir, several times. In the early part of the second world war I was rigging and winch driver instructor for the Army Transport Service, instructing crew members in rigging and winch driving and breaking in Army [115] troops. I think they called them port battalions or stevedoring companies. I don't know what the terminology was. Then I was instructor at Fort Lawton for the Military Sea Transport Service as a winch driver instructor and rigging instructor.

Q. Do you know one kind of a splice from another as a rigger? A. Yes, sir.

Q. Is that part of a rigger's job, to make splices?

A. Riggers in the sail loft, yes, but outside riggers, no.

Q. Have you ever worked as a sail loft rigger?

(Testimony of Walther Gerst.)

A. Yes, sir, for Puget Sound Shipyard, Alaska Steamship Company, the Steverson Stevedore Company in Wilmington, California. Did I mention Foss Tug? Foss Tug Company here in Seattle, and a few others I just can't remember right now.

Q. Now, were you working on the night of the 14th of July, 1956, and the morning of July 15th, 1956, here in Seattle?

A. Well, you gave me the date of the morning or the evening before. I wouldn't say, but I was working on that ship the night of the accident, if that's what you're referring to. Whether it was the 14th or 15th I wouldn't say.

Q. And how did you happen to be working aboard her? [116]

A. Well, I was the hatch tender of that gang working in number two hatch, sir.

Q. And when had you started work?

A. At seven o'clock in the evening.

Q. Were you a regular longshoreman or were you just filling in?

A. Well, they were short of winch drivers at the time. I worked on the waterfront down south as a winch driver, hatch tender and foreman. In the port they were short of winch drivers at the time, and I get quite a bit of employment that way in the springtime when things are pretty good here practically anywheres on the coast, whatever port I happen to be in.

Q. In front of you is Defendant's Exhibit 4—

(Testimony of Walther Gerst.)

The Court: A-4.

* * * * *

(Witness excused temporarily.)

WALTHER GERST

resumed the stand. [147]

(Defendant's Exhibit No. A-4 was placed before the witness.)

Direct Examination—(Continued)

Q. (By Mr. Poth): Now, Mr. Gerst, please examine the splice on that block and tell us what kind of a splice it is.

A. It starts out as what we call a West Coast or logger splice——

* * * * *

Q. (By Mr. Poth): Would you please tell us if that splice has a name?

The Court: Did you ask him before? Has he previously testified that this does have a splice of some sort or other?

Mr. Poth: Yes. I'll start there, your Honor.

Q. (By Mr. Poth): Does that have a splice on it? A. Yes, sir. [148]

Q. And what sort of a splice is it?

A. Well, it's called either a West Coast splice or a logger splice.

The Court: For what purpose is the splice there, if you know? For what purpose was it originally put there or is it now there, if you know?

A. Well, this was——

(Testimony of Walther Gerst.)

The Court: Mr. Gerst, these jurors, some of them, doubtless do not know a thing in the world about this business at all, this business of blocks and tackle and lines and things like that.

A. Well, the difference of splices, sir, some are started different than others.

Q. (By Mr. Poth): Mr. Gerst, why is it necessary, if it is necessary, to put a splice on a block like that?

A. Well, to join—to make an eye splice and join your wire together, that is the idea of making your wire splice. It's to bring your wire around through here and splice it into its own part.

Q. Are there different kinds of splices used for that purpose? A. Yes, sir.

Q. What type of splice is that one there?

A. This is what they would call either a West Coast or a logger splice. [149]

The Court: L-o-g-g-e-r?

A. Yes, sir.

Q. (By Mr. Poth): What is a Liverpool splice?

* * * * *

Q. (By Mr. Poth): Please tell us how a Liverpool splice is spliced or made.

Q. You splice six, five, four, going through the same opening; three, two, one, goes under a single strand, and then you take two reverse lock tucks on each one. That is a Liverpool splice. A West Coast splice is under two and over one, the logger splice the same.

Q. Are the difference in the two regularly dis-

(Testimony of Walther Gerst.)

tinguishable by merely looking at them?

A. Yes, sir. [150]

The Court: What are the units that you refer to by the "one, two", and so forth?

A. Well, sir, there are six strands of wire here.

The Court: In other words, if you are dealing with a wire to be spliced, which wire has six strands that all go together to make up some part of the wire, is that it?

A. Yes, sir. You'll have six strands that make up your wire right here, sir.

The Court: All right, then do you call one of them one and the other one two or something like that?

A. Yes, sir, they each have different numbers.

The Court: All right, you may proceed.

Q. (By Mr. Poth): Now, did you examine the block that fell down and struck Mr. Cordray on the morning of July 15th? A. Yes, sir, I did.

Q. And what sort of a splice did that block have on it? A. A Liverpool splice.

The Court: Do you mean block or do you mean the wire?

A. The strap.

Mr. Poth: The strap, yes.

Q. (By Mr. Poth): What sort of a splice—— [151] A. A Liverpool splice, sir.

Q. Does that have a Liverpool splice on it, the one A-4? A. No, sir.

Q. Now, what sort of a block was it that fell on Mr. Cordray?

(Testimony of Walther Gerst.)

A. The block was the same type as this block, but these sleeves here came through the block with a bolt and a grommet on it. That's what I'm classifying as a sleeve. It come through two inches, I'd say, and a bolt goes through with a grommet in it.

Q. And what other difference, if any, did you notice between that block and this one, referring to the block itself?

A. The block itself? That's all the difference, I would say, sir, on the block.

Q. Now, what was the condition of the strap on the block that you saw aboard the P & T Adventurer on the morning of July 15th and the strap which you see there?

A. I would say the strap, the tail of the strap—what I mean by the tail of the strap, this part that's left of the strap—I'd say it was about two foot long or maybe two and a half foot long, that is from the back end of it or toe to the tail of the strap.

Q. Now, what was the condition of that strap as you saw it outside of its length, the one which you saw aboard the P & T Adventurer? [152]

A. The strap was split right here, all these wires were close together where it was just beveled in, and I felt it and it just felt like, well, I don't know how to explain it, like burnt coffee grounds; it just rolled out off into your hand. There was no slush on the strap, or pardon me, I meant to say lubrication, that's what we call slush, lubrication

(Testimony of Walther Gerst.)

on the strap. The core was not lubricated because there was no core at the end where it broke off.

Q. Did you see a core like that in the strap which you saw that night? A. No, sir.

Q. Was there any core at all?

A. Well, I cannot answer that because the wires were closed, they were rove in tight, and there was no core at the end where I could see. Whether there was any core in the rest of the strap I could not say.

Q. What was wrong with that strap, if anything, that you saw on the P & T Adventurer?

A. I would say the strap had deteriorated.

Q. In what manner?

A. Well, she had rusted through by not having proper lubrication of it.

Q. Now, what time did you come aboard that ship that night? [153]

A. I think it was about five minutes of seven or seven o'clock, somewheres in that whereabouts.

Q. And what was your job?

A. Hatch tender of the gang. One hour you're hatch tender, one hour you're driving winches. You change over between the two.

Q. Now, where were the booms when you came aboard that night at the number two hatch?

A. Well, they were rigged for the after end of the hatch.

Q. Now I'll ask you, is it possible ordinarily for the longshoremen when they come aboard a ship

(Testimony of Walther Gerst.)

to inspect the gear and tackle up at the top of the booms? A. It's impossible, sir.

Q. Why is that?

A. Because your booms are fifty foot long, approximately, and it sets on top—and your king post at your mast house and your gooseneck, that's seven or eight foot off the deck, and you would be about—the tip of the boom when it's lowered to work cargo I would imagine is anywheres from thirty to forty feet off of the deck of the ship.

Q. And if a strap on a gantline block was defective that night when you came aboard the ship on the yard boom on the starboard side, would you have been able to observe that? [154]

A. No, sir.

Q. And in fact did you observe any defect in the strap on the yard boom?

A. No, sir. If it was we'd have stopped operations until they were corrected.

Q. How long did you work that night?

A. I worked from seven till twelve, went to midnight lunch, returned at 1:00 a.m. and we were just finishing up, I'd say anywheres from a quarter to—fifteen minutes to five, ten minutes to five, when the accident happened. We was ready to go home, after the final completion of swinging the gear in.

Q. Did you see Mr. Cordray come aboard the ship? A. No, sir.

Q. Did you see him aboard the ship?

A. Yes, sir.

(Testimony of Walther Gerst.)

Q. And when was it you saw him aboard the ship?

A. I saw him while we were slacking the yard boom in, which would be the inshore boom or the starboard boom. We just had proceeded to slack the the offshore boom in. See, we have to slack both booms inside of the rail so when the ship leaves the dock it will not catch anything on the dock or maybe a tug or something alongside of it.

Q. How is it that you didn't see Mr. Cordray come aboard?

A. Well, I was busy with the operation of [155] slacking the offshore boom in.

Q. And what were you doing? Just exactly what were you doing?

A. Giving orders to the men to slack the gear in.

Q. Where were you standing?

A. Well, I was standing in several places, sir. First I was on the offshore side when we slacked the offshore boom in, then I came on over to supervise slacking the other one and I was over to the rail; I told them to take the tent gantline off and the preventer, told the man to stand by the guy, and I walked up forward a little bit more and gave orders to the winch driver to pull it in. What I mean is, pull it in with the ship's winch.

* * * * *

Q. (By Mr. Poth): Well, I'll ask the question, did you see the tent gantline let go and the preventer? [156]

A. Yes, sir.

(Testimony of Walther Gerst.)

Q. And where were they both secured, if they were both secured?

A. On a cleat on the ship's rail right—I'd say just a little aft of your shrouds. That's your wires that come down and hold your cross stays down to the ship's side.

Q. And in what order were they secured?

A. Your preventer was on the bottom and your tent gantline was on top.

Q. What is the preventer made out of?

A. Wire. The one on that ship was made of wire. There's several different types of preventers that different companies use.

Q. And then what type of winches were on that ship?

A. Electric winches. Westinghouse controls, I believe.

Q. Now, what portion of the hatch was being worked?

A. The after end of number two hatch.

Q. And where were the winches situated which you were using?

A. Aft of the hatch.

Q. Aft of the hatch?

A. Yes, sir.

Q. And how high up was the boom top, that is the yard boom, prior to the time you started to wing it in? I mean the degree of height rather than the—— [157]

A. Well, the degree of height, I would say—I'd say she was down about twenty degrees, maybe twenty-five, somewhere in there. I wouldn't say that's an accurate figure, I'm just guessing now.

(Testimony of Walther Gerst.)

Q. Was she topped up so that the after end of the hatch could be worked?

A. Yes, sir, topped up and wung out.

Q. She was not topped up to work the forward end of the hatch? A. No, sir.

Q. Well, tell us now just what you saw as this boom was being brought in.

A. Well, I walked up a little forward towards the hatch and told the winch driver to go ahead. I said, "Pull it in," and I'm watching the top of the boom to see when she come inside of the rail so we could stop the operation, and I see this tent gantline waving, then I seen it carried away and come right down amongst us, and I shouted "Look out" twice, and the block and the rope hit this gentleman there in the vicinity of the head or the chest and drove him into me. I was standing I'd say about—I'd say two or three feet behind Mr. Cordray.

Q. Did it come down fast or slow?

A. Well, sir, at them times when things are [158] coming towards you you don't notice the speed of things, you try to get out of there.

Q. And who was there with Mr. Cordray, if anyone, besides yourself?

A. Mr. Peters was standing I think right alongside of Mr. Cordray, and then over to the side at the rail was the two men that was slacking the gear in, myself,—now, there may be other people behind me, I wouldn't know.

(Testimony of Walther Gerst.)

Q. Now, you say you saw this tent gantline block hanging from the end of the boom, is that right?

A. Yes, sir.

Q. Well, why were you looking up there? Why was it necessary for you to look up there?

A. Well, to see when the end of the boom came inside your coaming. That is the ship's side. The coaming, we call it.

Q. Now, how far down was this tent gantline block hanging from the mast when you saw it up there? A. Do you mean the block?

Q. The block itself.

A. Well, I'd say six or seven feet. I could not give you an accurate figure because that is high up in the air.

Q. Now, what about the rope that went through the tent gantline block, how was that hanging?

A. It was in the block, rove through the block, [159] two parts, with the ends tied together in a square knot.

Q. Now, was there any strain on that block when you saw it up there hanging?

A. I don't quite understand what you mean, was there any strain on the block, sir.

Q. Was there any strain on the rope, the line going to the block? A. No, sir.

Q. Describe just how it was, how you saw it.

A. Well, your tent gantline was hanging like this to begin with to the ship's side until we undone it and threw it on deck. Then she hangs down

(Testimony of Walther Gerst.)

straight even with your boom, maybe a little bit—the weight of your rope may keep it back a little bit, and as the boom comes in your rope—your tent gantline and your preventer is coming in at the same time. The only thing you have the strain on would be your outboard guy and the strain on your winch fall pulling it inside the rail.

Q. Now state whether or not as you saw it that tent gantline block was hanging free.

A. I'd say it was, yes, sir.

The Court: Hanging free of what, would you mind asking him, Mr. Poth?

Mr. Poth: Well, perhaps I—thank you, your Honor. [160]

Q. (By Mr. Poth): I will ask you this: When the tent gantline rope is secured in place where does the tent gantline block find itself? That is, when you're working.

A. On the other end of this tent gantline rope there, attached to the tip of your boom on the outboard side the same as your guys and your preventers, on some ships. On some ships they have a big wire, a big eye on the end of the wire. This is the eye of the wire——

Mr. Howard: If the Court please, I'm going to object to this "on some ships".

The Court: The objection is sustained.

Q. (By Mr. Poth): Confine yourself to this ship.

A. I'm sorry, sir, I was just trying to explain.

The Court: Never mind what somebody said,

(Testimony of Walther Gerst.)

either the Counsel asking the question or the witness making answer about the block being free.

Mr. Poth: Maybe I can put it this way——

The Court: It is that thing that I want examining Counsel to direct this witness' attention to and try to get some explanation in the record of what is meant by that term.

Mr. Poth: Yes.

Q. (By Mr. Poth): Well, I might put it this way: Does the tent gantline block hang down?

A. Yes, sir. [161]

Q. When the gantline line is made fast to the cleat by the shrouds?

A. If it's made fast?

Q. Yes.

A. She will not hang straight down. She'll just hang towards whatever direction that you have your tent gantline fast to.

The Court: What do you understand by the expression, if you have any understanding of it, "the block hung free"? Has that any meaning to you as to what position the block is in when you refer to it as hanging free?

A. Are you speaking to me, sir?

The Court: Yes.

A. Yes, sir.

The Court: Say what it means.

A. Well, anything that's hanging free is any——

The Court: No, not anything, we are talking about this block.

(Testimony of Walther Gerst.)

A. If this block was hanging free she was not made fast to anything. That's our expression for it.

The Court: How would she be hanging if she was hanging free?

A. She would be hanging straight down, sir, not being made fast to anything. If it's made fast——

The Court: Except at the top end from which she was hanging, is that right?

A. From the top of your boom, yes, sir.

The Court: Now you may proceed.

Q. (By Mr. Poth): You mentioned that this block was swinging as the boom was being moved in?

A. Yes, sir.

Q. Why, if you know, was it swinging?

A. The vibration of the electric winches pulling it in. On electric winches you can only go with one notch and stop on your magnetic brake, and that causes your boom to sway. Then when you take the juice again one more notch,—by “juice” I mean electricity,—you pull it in and it vibrates.

Q. Was this block swinging? A. Yes, sir.

Q. And then what happened?

A. It carried away and just about then I started to shout. I shouted twice to look out, and I started stepping back when it came down and struck Mr. Cordray.

Q. How far away from him were you when it hit Mr. Cordray?

A. I'd say I was no more than two or three feet behind him. [163]

* * * * *

(Testimony of Walther Gerst.)

Q. (By Mr. Poth): I'll ask you, Mr. *Peters*, when you were [164] standing where you were did you have reason to believe that you were in a position of danger?

A. No, sir, if the ship's equipment was in good shape I was in no danger whatsoever.

* * * * *

Q. (By Mr. Poth): Where was Mr. Cordray standing at that time?

A. Two or three feet in front of me, abreast of the hatch, the after end of number two hatch.

* * * * *

Q. (By Mr. Poth): Well, in so far as the gear was concerned that was being used there, was there any difference in the place where you were standing and where Mr. Cordray was standing? [165]

A. I didn't quite understand your question.
* * * * * [166]

Q. (By Mr. Poth): Well, I'll ask it this way: In your experience of forty years at sea are you acquainted with safe and unsafe places to stand aboard vessels during cargo operations and gear handling operations? A. Yes, sir.

Q. Well, I'll next ask you, what sort of a place was Mr. Cordray standing in at the time that this fell on him?

A. It was a safe place, or I wouldn't have been standing there myself. I was standing right in behind him.

Q. Now, after the accident what did you do?

A. Well, first of all I said, "Somebody better

(Testimony of Walther Gerst.)

take this fellow to a doctor, he's hurt," and I don't know who the fellows were that took him off the ship. I came back and the first thing I did, I looked the block over, looked at the splice and looked it all over, * * * * *

A. O.K. Then I took the rope gantline out of the block and I gave the block to Mr. Peters, the block and the remains of the strap to Mr. Peters.

Q. (By Mr. Poth): And how did you take this rope gantline out of the block?

A. Just rove it out by hand or pulled it out by hand.

The Court: How many feet of the rope passed through that block by force of your hand?

A. Well, I'd say I roved it out at least thirty foot, because you see it comes through and the two ends are tied together and you have to untie the knot.

The Court: That is sufficient.

Q. (By Mr. Poth): Did you cut the gantline rope? A. No, sir.

Q. What sort of a rope was it?

A. I'd say it was either three or three and a quarter inch circumference Manila rope.

Q. Did you put the rope on the dock?

A. No, sir.

Mr. Poth: I believe I have no further questions.

The Court: You may cross examine.

Mr. Howard: I would like to have Exhibits A-2 and A-3 shown to the witness.

The Court: That will be accorded to Counsel.

(Testimony of Walther Gerst.)

(The exhibits were placed before the witness.) [168]

Cross Examination

Q. (By Mr. Howard): Mr. Gerst, are you acquainted with a man by the name of Ahern?

A. Yes, sir. He was my partner that evening.

Q. What was his job at the time this accident occurred?

A. He was the winch driver at the time it happened.

Q. Was he driving the winches at the time the accident happened? A. Yes, sir.

Q. And do you know a fellow by the name of Rip O'Day? A. Rip O'Day, yes, sir.

Q. Was he there? A. No, sir.

Q. Now, getting back to this block and splice, the block before you, Mr. Gerst, the block that's before you, not the pictures, the block first.

A. Yes, sir.

Q. Nothing in that splice carried away, did it?

A. No, sir.

Q. Have you examined that block since the time of the accident until you appeared in court today?

A. Yes, sir.

Q. When?

A. Yesterday evening right there at that table, sir. [169]

Q. Last evening was the first time?

A. Yes, sir.

(Testimony of Walther Gerst.)

Q. Are you sure you saw it last evening and it wasn't today?

A. No, sir, last evening on the table right there, sir.

Q. I think the record will show that the block was produced this morning for the first time.

A. Was it this morning? It may have been this morning.

Q. Well, in any event you hadn't seen it between July 15, 1956, and when you saw it in court either last evening or this morning?

A. No, I haven't.

Q. And your recollection of the type of the splice is based entirely on what you saw on July 15, 1956?

A. Yes, sir.

Q. Did you have any particular occasion then to notice that splice?

A. Yes, sir.

Q. Why?

A. Well, I've always been splicing all my life and working around that kind of work and I'm always interested in the splice. It's just a matter of—like someone would look at an automobile. I've been around that work all my life and that's the first thing I noticed.

Q. You mentioned also about the block, that it was the same type but the one as you recall had a sleeve and a bolt [170] and a grommet on it, I believe. Is that correct?

A. Yes, sir.

Q. Do you recall what color the block was that you examined on July 15, 1956?

(Testimony of Walther Gerst.)

A. It was the same type as this and the same color, sir.

Q. The same color? A. Yes, sir.

Q. Now, you have talked about the block hanging free as you observed it just before the accident occurred. As a matter of fact, there were two pieces of three and a half or three to three and a half inch Manila line hanging down from that block, were there not? A. Two pieces?

Q. That is right. A. No, sir.

Q. There was a piece rove through the sheave in the block?

A. Yes, sir, that's right, sir.

Q. So there were two sections of rope hanging down?

A. The two bitter ends, yes, sir.

Q. And those were three to three and a half inch circumference Manila, were they not?

A. Well, offhand right now I'd say three to three and a quarter inch.

Q. And you say the block was swinging?

A. Yes, sir. [171]

Q. With that rope hanging down from it?

A. Yes, sir.

Q. These winches that are used are an improved type of winch, are they not? A. Yes, sir.

Q. Over the old steam winch?

A. They're not an improved type over the steam winch, sir, but it's an improved type of winch.

Q. It is an improved type of winch?

A. Yes, sir.

(Testimony of Walther Gerst.)

Q. Now, Mr. Gerst, would you please look at the two pictures before you. First before you look at those may I ask you this—— A. Yes, sir.

Q. On the morning of July 15th after this accident occurred did you have an opportunity to look up and see what the other end of this block and strap looked like that was still hanging from the tip of the boom? A. No, sir.

Q. You never looked up there?

A. I looked up, sir, but I—it's quite a bit off the deck there. I couldn't see.

Q. All right. Now look at the exhibits that are before you, the two pictures. Do you see a portion of a hatch tent gantline in those pictures? [172]

A. This picture was not taken at that dock, sir.

Q. No, I didn't say that it was taken at that dock, Mr. Gerst. A. Oh.

Q. Do you see a portion of a hatch tent gantline?

A. I can see some frayed wire up there, but whether that's the hatch tent gantline or not I wouldn't say, sir.

Q. Well, look at the next boom after there. Do you see a complete hatch tent gantline in one picture? A. Yes, sir.

Q. And on the one forward of that there appears to be some pieces of frayed wire?

A. You see, sir, I'm looking on this side—the way your pictures are, you're facing the picture there, where if you was looking from the other side I could give you a more definite answer, sir.

(Testimony of Walther Gerst.)

I'm looking at it from the wrong side of the boom.

Q. Will you state, if you can, whether those pictures depict the condition of the upper portion of the hatch tent gantline strap as you may have observed it casually after the accident on the morning of July 15th? A. I couldn't say, sir.

Q. It's possible that they do but you just can't say? A. I could not say positive, sir.

Q. Now, Mr. Gerst, you have expressed an opinion as to the [173] place where you were standing as being a safe place to stand? A. Yes, sir.

Q. You were a winch driver or hatch tender?

A. Hatch tender at the time, yes, sir.

Q. You have to be out on deck, do you not?

A. Yes, sir.

Q. You have to be real close to the winches and to the side of the ship so that you can convey signals to the winch driver, isn't that correct?

A. Not close to the winches. You're close to the operation of moving your cargo, yes, sir.

Q. Well, you can't be fifty or sixty feet away fore or aft on the ship? A. Oh, no, sir.

Q. You have to be within a very close distance to give your signals? A. Yes, sir.

Q. Now, Mr. Gerst, it's not necessary for a dock foreman to be there, is it?

A. Well, I wouldn't be no authority to answer that question, sir.

Q. It's not customary for Customs officers to stand there, is it?

(Testimony of Walther Gerst.)

A. I've seen Custom guards standing there, Custom guards [174] down in the hatch, sir.

Q. As a matter of fact, Mr. Gerst, it's customary for every effort to be made to keep any persons not directly involved with the stevedoring operation out from under the cargo-handling gear, isn't that true, as a safety precaution?

A. If they are in an unsafe place, yes.

Q. Yes.

A. If they are in an unsafe place.

Mr. Howard: That's all I have.

* * * * *

(Witness excused.) [175]

* * * * *

The Court: Will the doctor come forward and be sworn as a witness for the plaintiff. [117]

DR. BERNARD GRAY

called as a witness in behalf of plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Poth): Will you state your name, please? A. Bernard Gray.

Q. And where do you live, sir?

A. 1110 34th Avenue South, Seattle.

Q. And are you a licensed and practicing physician and surgeon under the laws of the State of Washington? A. Yes, sir.

Q. And do you maintain offices in this city?

A. Yes.

(Testimony of Dr. Bernard Gray.)

Q. And where are those offices, Doctor?

A. In the Stimson Building, 1215 Fourth Avenue, Seattle.

Q. Do you practice any particular specialty?

A. Yes, bone and joint——

Q. What is that?

A. Bone and joint surgery.

Q. Bone and joint surgery? A. Yes.

Q. What education have you had, Doctor, to prepare you for the practice of your profession and specialty?

A. I graduated from the University of Manitoba School of [118] Medicine in 1935. I was an interne at the Winnipeg General Hospital. I was a surgical resident at the Deer Lodge Hospital in Winnipeg and the Seaview Hospital in New York City. I did three years of orthopedic, that is bone and joint, work at the Permanente Foundation Hospital in Oakland, California.

Q. And what societies or professional associations do you belong to, Doctor, in connection with the practice of your profession?

A. I belong to the American Medical Association and the King County Medical Society, I belong to the Western Orthopedic Association, I'm a clinical instructor in orthopedic surgery of the University of Washington School of Medicine.

Q. You're an instructor at the University of Washington School of Medicine? A. Yes, sir.

Q. And are there any other professional societies that you belong to?

(Testimony of Dr. Bernard Gray.)

A. Some others that aren't as important.

Q. Now, during your practice have you had occasion to see, examine and treat Jack V. Cordray, the plaintiff in this action? A. Yes.

Q. And when did you first see him, Doctor?

A. I first saw him on August the 20th, 1956.

Q. And did you take a history at that time?

A. Yes.

Q. And what was that history, Doctor?

A. I saw him in my office. He told me that he was hurt on July the 15th, 1956, on a vessel at Pier 48 in Seattle. He said that he was walking down the deck when a block came down from the end of a boom, struck him over the front of his right chest, and then the strap which was attached to the block struck him over the head and neck and jerking his neck. He said that he was in immediate distress and he was taken directly to the Swedish Hospital where he was admitted and remained for three days. During that time he apparently had considerable pain in his neck and in his back. He was under the care of a doctor at that time who applied a collar around his neck, and he had some physical therapy treatments.

He said that he resumed work on July the 26th, 1956, and worked two shifts as a foreman. He told me that when he reported back to his doctor's office on August the 17th, 1956, he was advised that the company had cancelled treatment and then he came to see me for treatment. At that time he told me he had been a longshoreman since 1939; he had sus-

(Testimony of Dr. Bernard Gray.)

tained an injury to his [120] back in 1949 which wasn't relieved until he had an operation on his back in 1950. He said that at that time he also developed pain down the right leg so that since 1950 he has done somewhat lighter work than he did before then. He said he had had no other serious injuries.

Q. Where was this operation performed on his back, Doctor?

A. His lower back. At the time I saw him he was working, he had worked nineteen hours the week before I had seen him, but he was having what appeared to be considerable trouble. He said that his neck was very stiff and painful and he complained of severe headaches which seemed to radiate from the back of the neck over the top of the head, and the pain also seemed to travel down the back between the shoulder blades at times. He complained of a constant ache in his lower back which he felt was more than he was accustomed to before this injury, and he had some ache in the right leg, but his main trouble was in his neck.

Mr. Howard: I beg your pardon, the last——

The Court: His main trouble was in his neck.

The Witness: His main trouble was in his neck.

Mr. Howard: Thank you.

A. (Continuing) At the time I saw him he was thirty-six years old, and one thing that I noticed was that he [121] moved around holding his head quite still, and he was wearing what I call a wrap-around collar. It's a type of neck brace. His height

(Testimony of Dr. Bernard Gray.)

was five foot eight inches at that time, his weight was 150 pounds.

Significant findings on examination were confined to his neck. I found that there was complete restriction of active motion of the neck in all direction. When I asked him to move his neck he felt that he couldn't move his neck in any direction. When I tried to test his neck by trying to get him relaxed and moving his head myself, I couldn't move it because it was resistant, and he said it was resistant because it was painful as well as stiff.

I found some evidence of some low back distress, but that turned out to be not significant because his low back subsequently cleared up fairly well.

At the time I saw him I made some X-rays. I made some X-rays of his neck. The significant finding in the neck was that there was what I call complete loss of the normal curve of the neck. The normal curve of the neck is a curve that is concave backwards and his neck on X-ray was straight, and that to me indicates spasm of the muscles and strain of the joints so that the neck is being splinted.

At that time I advised him to stop work. In [122] fact, I advised him to go into the hospital, and I put a more adequate neck brace on him, and I sent him into Providence Hospital on August the 28th and he remained in the hospital for approximately eighteen days.

The first thing I did for him in the hospital was to keep him in bed and put a neck halter on him

(Testimony of Dr. Bernard Gray.)

and put him in traction, using about ten or twelve pounds, I don't recall.

Q. (By Mr. Poth): How does this traction work, Doctor?

A. Well, traction is supplied through a halter which hangs them up this way. There's a spreader bar and then a piece of rope. It's applied with him lying down with his neck bent forward a little and his head on a pillow. The rope goes through a pulley over the head of the bed and there's about eight or ten or twelve pounds applied to it. The purpose is for continuous traction, to splint the neck to try and overcome the muscle spasm and try and open up the joints, and I kept him in traction for approximately twelve days. That gave him some relief from the pain but it didn't give him enough, and on September the 11th under a general anesthetic I manipulated his neck. I put his neck through a fairly full range of motion.

Q. Why is it necessary to give an anesthetic when you do that, Doctor? [123]

A. Well, for several reasons. In the first place, it might be extremely painful. The second thing is that I've got to get his neck completely relaxed so that I can put these joints through as much of a range of motion as I can to overcome all the muscle spasm, and under an anesthetic—and I want you to understand we don't force the neck under anesthetic. It's a question of how much pressure we can apply.

I found that I could bring his neck through a

(Testimony of Dr. Bernard Gray.)

full range of motion. That was associated with some creaking, but I got a reasonably good range of motion and that gave him a lot of relief for the first time, so that he could—at the time he was discharged from the hospital on the 15th of September he had much better motion. He was then given physical therapy treatments by a physical therapist, and that treatment consisted of heat and massage to his neck, stretching of the neck, using substantial amounts of weight.

Q. Where was that performed, that physiotherapy?

A. Most of that was given, I believe, by my physical therapist—or the physical therapist who does my work, Miss Garvin, in the Stimson Building. He might have had some in the Providence Hospital, I don't recall right now. And so that by the middle of October we had him on exercises of his neck to try and maintain this [124] range of motion. He was still having pain, especially when he turned his head, and I note on October the 17th that he was working and I thought I would release him to work fairly soon. No, he returned to work on October the 22nd, working two or three days a week.

His main complaints during that time were recurrent headaches, pain in the neck, especially on turning his head to the right, and he had an area of persistent tenderness and pain at the base of his neck just to the right of the lowest cervical spine. On November the 17th I put a needle in that

(Testimony of Dr. Bernard Gray.)

area and injected novocain and cortisone, which gave him some relief. He's been under my observation since that time.

In December I noted that his headaches were improving. He was still doing light work, as I note it, foreman's work, and I felt that he should wear his neck brace when he had trouble, and later on I gave him or supplied to him a head halter and spreader bar so that he could rig up a traction setup at home where he could stand up or lie down and put this rig on and give himself some of these stretching treatments.

In December of '56 I noted that he was doing light work. He was complaining of catching pains on the neck, especially on twisting his head.

On January the 9th I noted that he had a [125] flareup of his neck pain, which subsided after taking some time off.

In February he came in, his work had been harder and he was having more pain in his neck again. This is February, 1957. In fact, that's when I advised him to do this neck stretching every day at home or twice a day, and that gave him some relief again and he got a little relief from this flareup.

On April the 1st, 1957, I noted that he was working half time and when he was working half time he was feeling better than when he was working full time. And he had certain specific complaints. He was working on a bull. One of his complaints was that any jarring of the truck would bother him and

(Testimony of Dr. Bernard Gray.)

cause an aggravation of neck pain and headache so that he would quit work at times. He also complained of an ache down the right arm with numbness of the fingers which would come and go. At that time I found that rotation of the neck, twisting to the side, was limited, that when I bent his head forward he complained of a catching pain which would stop motion before it went through a full range, and he still had an area of tenderness.

I gave him another one of these neck injections on April the 15th into that area where he complained of his catching pain, and that caused a flareup for a few [126] days, which it well might, and then within a week he seemed a little better.

I've been watching him since that time. I haven't given him any particular active treatment except for a short period during the month of June.

I saw him on July the 9th and he told me that the last three weeks in June he had been much worse, that his work was somewhat harder, and he took eight days off and got relief, and he was still taking his neck stretching treatments twice a day.

I saw him on September the 3rd. He said he had taken a vacation and the strain of driving the car had made him worse, the strain of holding his head in one position, but the findings were the same.

I saw him on September the 23rd of this year. He told me that he had had the flu and had had to do a lot of coughing, and the coughing definitely made

(Testimony of Dr. Bernard Gray.)

him worse and caused pain to shoot down the right arm and into the last two fingers of the right hand, and at that time I noted some numbness in those two fingers.

I saw him last on October the 21st, 1957. His condition has been about the same for a number of months. His main trouble was that any jarring or sudden twisting caused a severe pain at the base of the neck just to the right of the midline and any exertion caused his neck to [127] hurt and give him headaches, and his symptoms apparently varied directly with the amount of work that he was doing. The less work he was doing, the less trouble he would have.

Q. In your opinion were the troubles you have mentioned that he's been experiencing caused by the accident of July 15, 1956? A. I believe so.

Q. What is your diagnosis of his condition, Doctor?

A. My diagnosis is strain of the cervical spine. It's a strain of the joints and ligaments of the neck. The second diagnosis is the probable damage to the disc between those vertebrae at about the level of the seventh cervical vertebrae,—that's the lowest disc in the spine,—causing a derangement of that joint and causing recurrent pinching of the nerves in that area.

Q. Have you been able to determine whether or not there is nerve root involvement here?

A. I believe there's nerve root involvement, yes.

(Testimony of Dr. Bernard Gray.)

Q. What are the mechanics of this type of a neck injury, Doctor? Just what happens?

A. Basically it's a strain, like a strain on any other joint in the body. Neck strains are usually worse. The neck is more flexible and there are more joints in the neck. In many ways it's no different than a severe ankle [128] strain, inasmuch as each individual joint is concerned, except that in the neck there are many more factors than there are in the ankle. There's the factor that the nerves that go down the arm and the nerves that supply the back of the head come out from the neck. There's the factor that the joints are—there are many more joints and they are more complicated. There's the factor that that neck is under tension every minute that you're up to hold your head on your shoulders.

What happens is that there's a strain of the ligaments and the capsules that hold the joints together and——

The Court: Ligaments and what?

A. The capsule. The joint is two bones forming a bearing with each other. The joint is held in place by a layer of tissue which is called the capsule which encloses it. That capsule is reinforced by special bands of thicker tissue and that thicker tissue is called the ligament, and when a joint is strained one of the things that is involved is this capsule, the thing that holds the joint together. In addition there could be damage to the disc between the bodies of the vertebrae. This disc is a layer of spe-

(Testimony of Dr. Bernard Gray.)

cialized tissue that acts as sort of a shock absorber. It contains strands of tissue on the outside holding together a [129] center which is under tension, and as one bone moves on the other this tension is transmitted from one side to the other, and with injuries the fibers around this disc can be torn and the center can bulge out in one area and cause pain. If it bulges through the torn fiber it will cause pain as it pinches off one of the central nerve roots.

The mechanism of these injuries is hard to explain. Basically it's a complicated joint injury. They notoriously persist for a long time, they often are permanent, and one of the reasons for the permanence is the fact that this disc is very easily involved, and another reason is that it's very hard to put that neck at rest because of the constant strain on the muscles and on the joints in every moment that you're up on your feet.

I don't know if I've made myself clear, but these things are common and notoriously chronic.

Q. (By Mr. Poth): What treatment can be given, Doctor?

A. The treatment of any neck injury is to put the part at rest at first, and this was done for Mr. Cordray. He was, I understand, hospitalized and put in traction or a neck support. And after the acute symptoms subside the treatment is to try and regain motion of the neck by exercises, by physical therapy, by manipulation, and [130] that treatment to some degree may have to be persisted in for a

(Testimony of Dr. Bernard Gray.)

long time because of the chronic nature of these injuries.

The treatment Mr. Cordray needs right now is basically the treatment he's giving himself. The first thing he is doing is trying to avoid neck strain. The second thing is that he uses a collar once in a while when the load of the head gets too heavy. The third thing is he's doing exercises to try to keep his neck freely movable.

Now, much of his improvement from now on will depend, of course, upon what nature does for him. If that disc degenerates and tends to dry up, as it will or as it often will over a long period of time, his neck may stiffen up a little at that point and he may get substantial relief of his symptoms. On the other hand he may remain the same as he is indefinitely, or he may get worse. If he gets worse, it will exhibit itself by more evidence of irritation of the nerves that go down the arm, and then he may require much more radical treatment.

Q. What would the more radical treatment be, Doctor?

A. That would be surgical treatment to attempt to relieve the pinching or the pressure on the nerves.

Q. And just what is done in the surgery? [131]

A. In surgery the nerve root where it comes off the spinal cord is exposed, and any pressure from the disc spreading from the midline is relieved by removing the disc. That is usually not done, especially in the neck, without doing some special tests

(Testimony of Dr. Bernard Gray.)

for it, and the tests themselves are distressing enough that we don't like to do them unless we feel we have to do surgery.

Q. By reason of these neck symptoms that he still has do you feel that he is physically able to do the ordinary work of a longshoreman on a steady basis, full time? A. No, sir.

Mr. Poth: May I have the two exhibits, your Honor, that I put in?

The Court: You may have all of them.

(Exhibits were handed to Mr. Poth.)

Q. (By Mr. Poth): I'm going to show you, Doctor, Plaintiff's Exhibit 1, which is a hospital bill from Providence Hospital,—two of them, one in the amount of \$159.50 and the other in the amount of \$426.25, and I'm also going to show you a bill from Swedish Hospital in the amount of \$96.45, which is Plaintiff's Exhibit 2.

(Plaintiff's Exhibits Nos. 1 and 2 were handed to the witness.)

Q. Referring now to Plaintiff's Exhibit 1, which is the [132] Providence Hospital bill, I'll ask you whether or not the charges set forth are reasonable and whether or not they were necessary for the treatment of Mr. Cordray?

Mr. Howard: I so stipulated this morning, your Honor, that they were reasonable.

Mr. Poth: And necessary?

Mr. Howard: And necessary.

Mr. Poth: I have no——

The Court: Is there anything else?

(Testimony of Dr. Bernard Gray.)

Mr. Poth: Counsel has stipulated, your Honor.

The Court: At this time we will take—Mr. Howard, will there be substantial cross examination?

Mr. Howard: Well, I would like to allow at least ten or fifteen minutes, your Honor.

The Court: The Court is not limiting you. I was merely inquiring to think about the convenience of the witness with respect to when the Court takes a recess. How long do you say you thought you would be?

Mr. Howard: I estimate ten to fifteen minutes.

The Court: I think we will proceed.

Mr. Howard: Very well.

The Court: Does anyone feel that you would prefer to have the recess now rather than at a reasonable time later? If so, will you let that be known? (No response.) We have had several delays today and I like [133] to try to accommodate the doctor witnesses when we can possibly do it, so I think we will proceed now.

Mr. Howard: While I'm examining to begin with may we have these marked for identification as exhibits?

The Court: That will be done.

Mr. Poth: I haven't concluded my direct examination, your Honor.

The Court: You have not?

Mr. Poth: No, your Honor.

The Court: I do not see how one could have misunderstood you on that, but you may proceed with further direct examination.

(Testimony of Dr. Bernard Gray.)

Mr. Poth: Thank you, your Honor.

Q. (By Mr. Poth): What has been the amount of charge that you have made for your services to date, Doctor?

A. My bill to date for all my treatment and for all the X-rays is \$544.00.

Q. That's \$544.00? A. Yes.

Q. And do you contemplate seeing him and treating him in the future, Doctor?

A. He should—yes, he should remain under medical observation, but I have no active treatment to offer him right now except as I said, the things that he is doing and to come in with his acute flareups. [134]

Q. Now, is this injury that he has received in your opinion permanent?

Mr. Howard: Just a moment. That's a leading question, your Honor.

The Court: It is sustained.

Q. (By Mr. Poth): Well, could you state whether or not, Doctor, in your opinion the injury that he has received is or is not permanent in its effect?

A. I feel that the effects of the injury are substantially permanent.

Q. And how is it, aside from the explanation which you've already given, how is it, if it is, that an injury of this type to a neck can be permanent and an injury to an ankle of a similar type be not permanent in its character?

A. Well, I might point out that many injuries

(Testimony of Dr. Bernard Gray.)

to the ankle without fractures are permanent, too, in that the ankle will give way easily. Many people have had ankle strain and seem to get along quite well walking on the level, walking along on gravel, so that an ankle injury can be permanent.

The Court: Get to this one just as soon as you can, Doctor?

A. Oh, excuse me. Well, I just wanted to point out that the question didn't necessarily make sense to me. [135]

The Court: Oh. He wishes you to clarify the question, Mr. Poth, if you can do so. Will you?

Mr. Poth: Perhaps I did not very aptly state the question, your Honor.

The Court: You may proceed.

Mr. Poth: Perhaps, your Honor, would you permit the court reporter to read it back?

The Court: Very well.

(The reporter read back Mr. Poth's last question.)

The Court: I wish you would state another question.

Mr. Poth: I think I'll strike the question.

The Court: Please do that. You may restate the question.

Mr. Poth: I'll restate the question.

Q. (By Mr. Poth): Injuries—well, why is a neck injury, if it is, more serious than an ankle injury?

Mr. Howard: Well, your Honor, that question

(Testimony of Dr. Bernard Gray.)

presupposes something that has not been testified to.

The Court: The objection is sustained.

Mr. Poth: I said "if it is".

The Court: I think you better find out if it is first. [136]

Q. (By Mr. Poth): Is this more serious than an ankle strain?

A. Yes. I thought I made that clear a little while ago when I discussed the mechanism.

Q. And briefly why is that, Doctor?

The Court: Did you indicate, Doctor, you have already explained why in a previous statement, or have you?

A. Yes, or at least I gave the reasons why, because it's a more complicated joint, because the disc has the question of nerves coming out, it's related to the entire mechanism of holding the head on the shoulders during every hour of the day.

Mr. Poth: I have no further questions.

The Court: You may cross examine.

Cross Examination

Q. (By Mr. Howard): Doctor, I believe you said you took some X-rays. Was that at the time of your first examination of Mr. Cordray?

A. I took X-rays then, yes.

Q. Did you take some thereafter?

A. Yes.

Q. When, please?

(Witness refers to X-rays.)

(Testimony of Dr. Bernard Gray.)

A. On May the 14th, 1957. [137]

Q. Was there any change noted in the skeletal formations between the first X-rays and the ones taken in May of 1957? A. Yes.

Q. And the nature of that, please?

A. There were less obvious effects of spasm, whereas at first the neck was quite rigid and there was a complete loss of the curve. Subsequently he seemed to have regained the curve, indicating that the acuteness of the affair was subsiding.

Q. How do spasms evidence themselves in X-rays?

A. It's the effect of the muscle spasm among other things that's evidenced by loss of the normal curvature of the relaxed spine.

Q. And would that account—the spasms would account for the loss of curvature rather than any traumatic injury, then?

A. No, not necessarily, because — of course, spasm is just part of an injury and the result of an injury, but when a joint is injured, that joint tends to put itself in a position of maximum relaxation to take care of the swelling. A better example I can give you is that when a knee becomes swollen it doesn't stay up straight, it usually becomes bent. When joints of the neck are swollen you usually lose the normal curve and the neck tends to become straighter. [138]

Q. Now, did you still have evidence of the loss of curve in the May, 1957 X-rays?

A. No, that had subsided.

(Testimony of Dr. Bernard Gray.)

Q. Was there any evidence or had it just subsided? A. Excuse me, sir?

Q. Was there any evidence of loss of the cervical curve in May of '57, or had it simply subsided?

(Witness refers to X-rays.)

A. I can't quite see the difference, but——

Q. Well,—— A. The curve——

Q. Perhaps I haven't made myself clear, Doctor. I thought by "subsiding" you meant that it had just lessened in degree. Was it still present in May of 1957?

A. Well, I don't think that the normal curve would reestablish itself, but at least he had a curve in these latter films whereas in these first films the neck was perfectly straight.

Q. Have you taken any more X-rays since May of 1957? A. No, sir.

Q. I presume that if you felt that his condition had worsened that you would have done so, isn't that right?

A. If it had been indicated I would have done so.

Q. And you have indicated that his condition has been improving? [139]

A. His condition—no, I have indicated his condition has been stationary for a considerable length of time, with periods of exacerbation and periods of improvement.

Q. Doctor, at the time of your physical examination of this man in August of 1956 I presume that you performed the usual tests, neurological

(Testimony of Dr. Bernard Gray.)

tests, for reflexes and sensation and so forth, is that correct? A. Yes, sir.

Q. Did you find any abnormalities in connection with those neurological tests?

A. Only in the lower limbs.

Q. Could those have in any way been related to a neck injury? A. I don't believe so.

Q. Did you take measurements of the upper limbs, the arms, at the time of your first examination? A. No, sir.

Q. Did you subsequently make any measurements of the upper limbs, extremities?

A. I might have. I have no record of them.

Q. What would such measurements indicate if they were larger on one side than on the other, say if the left arm at the biceps was larger than the right arm at the biceps?

A. Oh, it might indicate a number of things. [140] Measurement just means the development of the muscle. It might indicate wasting of one muscle or it might indicate overdevelopment of another muscle, it might indicate he was predominantly right-handed or predominantly left-handed.

Q. Is it a commonly recognized test for loss of use or lack of use due to some injury?

A. Yes, if the test is indicated.

Q. Incidentally, at the time of your first examination, Doctor, did you make any notation in your records then as far as any numbness or loss of sensation in any of the fingers, speaking of your August, 1956 examination?

(Testimony of Dr. Bernard Gray.)

A. When I first saw him there was no evidence of any nerve involvement in the upper limbs.

Q. And the only time that manifested itself, according to your testimony as I understood it, was in April or May, I believe, of 1957—I beg your pardon. In September of 1957. On September 23rd.

A. April the 12th, 1957, I have a notation to that effect.

(Defendant's Exhibits Nos. A-5 and A-6 were marked for identification.)

The Court: Defendant's Exhibits A-5 and A-6 have been marked for identification.

Mr. Howard: On the basis of the pretrial order I offer those in evidence.

Mr. Poth: I don't believe we agreed on that, your Honor. I'll check. [141]

The Court: Then I will hear you at some other time. Proceed with this interrogation.

A. My first——

Mr. Howard: Might I have the identifications returned to me at this time?

The Court: Yes, if you wish to inquire about them. They are in the custody of the clerk.

Mr. Howard: Very well, I'll leave them with the clerk. I have copies that I can refer to.

A. No, my first specific notation was on April the 12th of '57, then April the 15th of '57 I noted it again.

Q. (By Mr. Howard): And then again I think you testified on September 23rd.

(Testimony of Dr. Bernard Gray.)

A. Well, he's had it ever since.

Q. Yes.

A. But I have no notation or no record of it prior to April of '57.

Q. Now, Doctor, you mentioned that there is some special test that you might resort to in a case involving neck or cervical injury before you went into the radical form of treatment or surgery?

A. Yes.

Q. Have those tests been given to Mr. Cordray?

A. No, sir. [142]

Q. You haven't considered it necessary to give him those tests?

A. No, I wouldn't do it unless his condition became worse and we couldn't control him by conservative methods.

Q. And you feel that his condition is under control now from a medical——

A. Well,——

Q. From a medical standpoint?

A. It's not as good as I'd like it to be and certainly not as good as he'd like it to be, but I don't have much more to offer him and I don't feel that—if he was getting worse rather than remaining stationary we would consider surgery, and that was the opinion of the neuro-surgeon that I consulted with on the case.

Q. Now as to your opinion as to his ability to work as a longshoreman or dock worker, I understand that it's your opinion that he could not work regularly full time.

(Testimony of Dr. Bernard Gray.)

A. Yes, sir, if the work involved—that's the full work of a longshoreman as I understand it.

Q. How about as a foreman?

A. Oh, I think that he could work as a foreman. He would have his periods of exacerbation, but he's going to have to live with it.

Q. How about as a bull driver or lift truck driver?

A. Well, bull driving apparently bothers him quite a bit [143] because of the turning that's required and because of the jarring, and of course he can work, but he's going to—as he works he's going to reach periods of exacerbation, he's going to have to lay off and rest up for a while and then go back to work again.

The Court: Will you give the witness an opportunity with a proper question to advise the jury of the meaning of the word "exacerbation"?

Mr. Howard: Yes.

Q. (By Mr. Howard): Would you explain that word, please?

A. It's simply a flareup.

The Court: A what?

A. A flareup of the symptoms.

Q. (By Mr. Howard): Doctor, have you any idea of what income Mr. Cordray has been able to earn monthly as a dock worker or a dock foreman since this accident occurred?

A. No, I don't know what his income is. I know that he's having—he doesn't put in a normal amount of hours a year. That's the only thing I've ever

(Testimony of Dr. Bernard Gray.)

discussed with him. I believe he requires twelve or thirteen hundred hours to get a vacation, and he can't get that in a year.

Q. Doctor, if the records showed that Mr. Cordray earned the sum of \$861.77 working as a dock foreman and a lift truck driver or a longshoreman in the month of May, of 1957, would you say that indicated he was working only half time? [144]

A. I don't know what the pay scale is. I don't know what his pay scale is.

Q. Or if in July he earned \$654.56 would you say that that indicated a loss of earnings due to his physical condition?

A. I don't know what his normal earnings would be on an hourly basis.

Mr. Howard: I think that's all I have.

The Court: Any other questions you wish to ask of this witness? I wish to finish with this witness so that he may be before the recess——

Mr. Poth: Excuse me. I'll just ask one question.

Redirect Examination

Q. (By Mr. Poth): If the record indicated that he worked less hours, your answer would still be the same?

The Court: I think you should say less than what, Mr. Poth.

Q. (By Mr. Poth): Than Mr. Howard stated.

Mr. Howard: I didn't state any hours, your Honor.

The Court: He stated a certain amount of [145]

(Testimony of Dr. Bernard Gray.)

earnings in certain months, if his earnings were a certain amount in certain months, I believe, Mr. Poth.

Mr. Poth: Well, I'll withdraw the question, your Honor.

Mr. Howard: That's all I have.

The Court: May this witness be excused?

Mr. Howard: That's agreeable.

Mr. Poth: Yes.

The Court: The witness may be excused and may permanently retire.

(Witness excused.)

The Court: Court is now at recess for about ten minutes.

(Short recess.) [146]

* * * * *

Tuesday, November 12, 1957, 10:05 O'Clock A.M.

* * * * *

The Court: The plaintiff may now proceed with the further work in plaintiff's case in chief.

Mr. Poth: Your Honor, at this time I would like to present to the Court and jury the testimony as contained in the deposition of Melvin M. Stewart, which was a deposition taken at the instance of the defendant for perpetuation of testimony for use at this trial.

The Court: You may do that. [177]

* * * * *

DEPOSITION OF MELVIN M. STEWART

The Court: Very well, Mr. Howard, that will be splendid, and you may now proceed. Can you not start agreeably to both Counsel on the second page, indicating for whom the witness was called and for whom the witness' testimony is now read?

Mr. Poth: Yes.

The Court: And offered.

Mr. Poth: Mr. Howard states for the record, "Let the record show that this deposition is being taken on behalf of the defendant pursuant to written notice served and filed in this cause. The deposition is being taken for the purpose of use at the time of trial."

And then Mr. Poth says, "It is not for discovery, but for perpetuation of testimony, is that right?" Mr. Howard, "That is right." Mr. Poth, "On what ground?" Mr. Howard, "The witness is going to leave town this afternoon."

And the first question after Melvin M. Stewart was duly sworn was a question by Mr. Howard as follows:

"Q. Will you state your full name, please?

"A. Melvin M. Stewart. [178]

"Q. And your address? "A. My home?

"Q. Your home, yes.

"A. 3423 West Blaine.

"Q. Seattle? "A. Seattle.

"Q. What is your age, Mr. Stewart?

"A. 39.

"Q. And by whom are you presently employed?

"A. Olympic Steamship Company.

(Deposition of Melvin M. Stewart.)

“Q. In what capacity?

“A. Assistant to the President and manager of their terminal operations.

“Q. How long have you been employed by Olympic Steam? “A. 21 years.

“Q. How long have you been serving as manager of their terminal operations?

“A. Oh, approximately 11 years.

“Q. What terminals are operated by the Olympic Steamship Company at Seattle?

“A. Now or then?

“Q. As of July 15, 1956?

“A. We were operating Pier 28 and Pier 49.

“Q. Were you a public terminal operator?

“A. Yes. [179]

“Q. And on what basis did you operate those terminals?

“A. We leased the facilities,—Pier 28 from Chicago-Milwaukee & St. Paul Railroad, and Pier 48 from the Port of Seattle. We perform certain terminal services on the piers in accordance with published terminal tariffs.

“(Two documents marked Exhibits A and B for identification, and attached hereto.)”

Mr. Poth: I wish to offer those two documents at this time.

The Court: They may be marked as plaintiff's next exhibits.

The Clerk: Plaintiff's Exhibit 3.

(Deposition of Melvin M. Stewart.)

(Document entitled Seattle Terminals Tariff No. 100 was marked Plaintiff's Exhibit No. 3 for identification.)

The Court: Plaintiff's Exhibit No. 3 was formerly referred to as the first one, and what was that first letter, Mr. Poth?

Mr. Poth: I believe there's two documents.

The Court: Yes. The first one?

Mr. Poth: The first one is later referred to as Tariff 100.

The Court: Could I find out what identifying number the deposition gives it? [180]

Mr. Howard: Exhibit A is Tariff No. 100, your Honor.

The Court: Let it be noted.

Mr. Poth: And this was produced by the defendant.

The Court: Tariff 100?

Mr. Poth: Yes, your Honor.

Mr. Howard: They are attached to the original of the deposition there. Tariff 100, your Honor.

The Court: Very well. You may proceed.

Mr. Poth: There was also 2-D, your Honor, which was marked for identification.

The Court: That will be marked Plaintiff's Exhibit 4.

(Document entitled Seattle Terminals Tariff No. 2-D was marked Plaintiff's Exhibit No. 4 for identification.) [181]

(Deposition of Melvin M. Stewart.)

“Q. As a public terminal operator, what vessels are entitled to use your facilities?

“A. Any ocean-going vessel that has need for the services that we perform.

“Q. Can you identify the documents before you, which have been marked for identification as Exhibits A and B?

“A. Exhibit A is Seattle Terminals Tariff Number 100, published by the Port of Seattle, and participated in by Olympic Steamship Company, Inc., which lists the rates, rules and regulations governing charges for account of vessels. Seattle Terminals Number 2-d, Exhibit B, is also published and participated in in the same manner, and the charges therein are generally [182] charges for the account of cargo.

“Q. Are you familiar with an accident occurring to a Mr. Cordray on July 15, 1956?

“A. I am, by reports.

“Q. And as of that time do you know whether these terminal tariffs that you have described, Exhibits A and B, were in effect covering the operations of Olympic Steamship Company?

“A. They were.

“Q. And did they cover your operations at Pier 48? “A. They did.

“Q. Did Olympic Steamship Company have any other contracts with Pope & Talbot, Inc., other than might be considered as part of these terminal tariffs? “A. No.

(Deposition of Melvin M. Stewart.)

“Q. Now, referring you again to these two tariffs, will you describe for us what types of operations are set up in those tariffs to be performed by your company, and for which charges are provided in the tariffs?

“A. Tariff Number 100——

“Q. That is Exhibit A.

“A. ——that is, Exhibit A, is basically charges against a vessel, and these charges are a dockage charge, which is a charge for the use of the berth alongside the pier. Second, there is a section [183] covering service charges which are charges made against the vessel operator for various services performed for him, which include certain functions of checking, and also certain facility use charges. A third section is handling which pertains to the physical moving of the cargo to and from ship's tackle to or from place of rest on the terminal.

“Q. When you say ‘to or from ship's tackle,’ to what point do you refer?

“A. I refer to the point on the pier where the ship's hook takes or receives cargo. (Pause.)

“Q. Would you continue?

“A. There are some other miscellaneous charges in there, such as the difference between straight time and overtime, and a man-hour table, setting forth rates charged for the furnishing of various miscellaneous services.

“Q. Now, this covers the charges principally against the ship in Exhibit A, being Tariff 100?

“A. That is correct.

(Deposition of Melvin M. Stewart.)

“Q. Now, passing to Exhibit B, describe generally what type of charges is included in that tariff?

“A. Well, Tariff 2-D, Exhibit B, covers charges which basically are charged in most trades against the cargo, wharfage charges, and charge for cargo facility crossing the pier. There are charges for car loading and [184] unloading which is a labor service basically in the loading or unloading of railway equipment; and there are other miscellaneous charges such as dock storage, wharfage, demurrage, and various conditions which apply normally to the cargo interest.

“Q. In these two tariffs, Exhibits A and B, is there any charge or any service provided for in connection with the physical operation of removing cargo from the hold of a ship to the dock?

“A. No.

“Q. As of July 15, 1956, when the S. S. P & T Adventurer was docked at Pier 48, did the Olympic Steamship Company actually do any of the work of loading or discharging cargo from the vessel?

“A. What date?

“Q. On July 14-15, 1956? “A. No.

“Q. Do you know who was performing stevedore service aboard the P & T Adventurer on July 15?

“A. That was the stevedoring company — the Seattle Stevedore Company.

“Q. Did Olympic Steamship Company employ

(Deposition of Melvin M. Stewart.)

or supervise any of the longshoremen working aboard the ship? "A. No.

"Q. Did the Olympic Steamship Company [185] actually do any of the work aboard the vessel, such as the movement of cargo aboard the vessel——

"A. No.

"Q. Or such as rigging and trimming and manipulation of the cargo handling gear?

"A. No.

"Q. Who would have done that work?

"A. The Seattle Stevedore Company.

"Q. What services did the Olympic Steamship Company provide as of July 14-15, 1956 with respect to cargo to be discharged from the S. S. P & T Adventurer by the Seattle Stevedore Company at Pier 48?

"A. We performed basically most all of the services I have just outlined as covered by these two tariffs.

"Q. Would that have involved the moving of cargo across the dock?

"A. It would include the handling of cargo, the receipt accountability and final delivery to the consignee.

"Q. Did Olympic Steamship Company have in its employ on July 14-15, 1956 one Jack Cordray?

"A. We did.

"Q. In what position or capacity was he employed?

"A. He was employed as dock foreman.

(Deposition of Melvin M. Stewart.)

“Q. What generally are the duties of a dock foreman?

“A. Well, he is a supervisory employee who directs the work [186] of the longshoremen on the terminal in the physical movement of the cargo.

“Q. Now, you mentioned directing ‘the work of the longshoremen on the terminal.’ Did the dock foreman have any duties with respect to the longshoremen working aboard the vessel who were employed by Seattle Stevedore Company?

“A. Not directly, no.

“Q. Did you also have a dock supervisor employed at Pier 48 on July 14-15, 1956?

“A. We did.

“Q. Who was that? “A. Richard Wallace.

“Q. What would be the nature of the duties performed by the dock supervisor at that pier?

“A. Well, he is in effect the superintendent of the pier, who, under the direction of the day superintendent, has to do with the location and placement of the cargo on the pier, and has to do with the receipt and ultimate delivery of the cargo.

“Q. I understand Mr. Wallace was working a night shift then? “A. That is correct.

“Q. Would it be correct to say that Mr. Wallace as dock supervisor was the senior representative of the terminal operator on Pier 48 during the night of July 14-15, 1956? [187] “A. Yes.

“Q. Did the Olympic Steamship Company give its foreman or its dock supervisor any instructions, either written or oral, as of July 15, 1956, with re-

(Deposition of Melvin M. Stewart.)

spect to going aboard ships which might be loading or discharging at Pier 48? "A. No.

"Q. Will you state whether or not an office is maintained on Pier 48 for use of the dock foreman and any others? "A. Yes, there is an office.

"Q. Where is this office located with respect to the berth at which the S. S. P & T Adventurer was secured?

"A. It is located approximately in the middle of the warehouse, adjacent to the midship section of the vessel, across the dock from that particular berth.

"Q. Who uses that office?

"A. It is used by the dock foreman for the preparation of his time sheets and other paper work that he is responsible for. It is normally used by the supercargo of the vessel for his paper work in dealing with what checkers he may have employed for the operation of the vessel.

"Q. You mentioned the supercargo. Would you describe just what the duties of a supercargo might be?

"A. A supercargo is an employee of the steamship whose job is the over-all supervision of the loading or [188] discharging of the vessel. He in effect lays out the work and hires the checkers for the vessel to keep track of the cargo and secure receipts, et cetera.

"Q. Did Cordray as the dock foreman have any responsibility in connection with the loading or discharging of cargo, that is, the actual physical load-

(Deposition of Melvin M. Stewart.)

ing and discharge of cargo from the steamer P & T Adventurer on July 14-15, 1956?

“A. No, not aboard the vessel. His only responsibility would be the coordination of dock handling to see that the proper cargo manpower was available to perform the dock function.

“Q. In other words, the responsibility of Mr. Cordray with respect to the cargo began after the cargo had been landed on the dock by the ship’s tackle being operated by Seattle Stevedoring Company? “A. That is correct.

“Q. Do you know whether or not Mr. Cordray was on the dock or on the deck of the ship at the time he was injured in an accident?

“Mr. Poth: Just a minute. How does he know, in the absence of being present? Was he there?

“Q. Were you there?

“A. No, I wasn’t there.

“Q. Do you know whether or not he was on the dock or on [189] the ship at the time of the accident?

“A. Only by reports that he was on board the vessel.”

* * * * *

“Q. Had Mr. Cordray worked for Olympic Steamship Company on occasions prior to July 15, 1956? “A. Yes.

“Q. And in what capacity?

“A. Both as a dock foreman and as a longshore lift truck operator.

(Deposition of Melvin M. Stewart.)

“Q. What is a lift truck operator? Will you describe that?

“A. He is a member of the Longshore Union who drives a lift truck.

“Q. Can you describe the lift truck? [190]

“A. A lift truck is a mechanical piece of equipment that lifts and transports normally loaded pallet loads of cargo and stacks them or handles them on the pier.

“Q. Now, you mentioned Mr. Cordray worked both as a lift truck operator and as a dock foreman. I will ask you, was Mr. Cordray a regular dock foreman? “A. No.

“Q. What was his regular work?

“A. Normally, a longshore lift truck operator.

“Q. Would it be correct to say he was an extra dock foreman? “A. Yes.

“Q. Has Mr. Cordray worked for Olympic Steamship Company since the accident on July 15, 1956? “A. Yes.

“Q. On more than one occasion? “A. Yes.

“Q. And in what capacity?

“A. Both as a dock foreman and as a lift truck operator.

“Q. Is he employed by Olympic Steamship Company at the present time, if you know?

“A. No, not on a regular basis.

“Q. Not on a regular basis? “A. No.

“Q. Mr. Stewart, do you expect to be in Seattle on Thursday and Friday, November 7 and 8, 1957?

“A. No, I do not. [191]

(Deposition of Melvin M. Stewart.)

“Q. Where do you expect to be?

“A. I expect to be at meetings of the Northwest Marine Terminal Association, which will be held in Tacoma.

“Q. Are you willing to waive the reading and signing of the transcript of this deposition?

“A. I am.

“Mr. Poth: I am willing to waive it.”

Mr. Poth: Next now is cross examination by myself, Mr. Poth, of Mr. Stewart, and the first question which I asked the witness is as follows.

(The reading of the deposition of Melvin M. Stewart was continued as follows:)

“Q. What ship was in there on July 15th and 16th? “A. The P & T Adventurer.

“Q. Who owns the P & T Adventurer?

“A. Pope & Talbot Lines.

“Q. Now, I understood you to say that Olympic Steamship Company did not handle any cargo from the P & T Adventurer when she was there on the 15th?

“A. We handled the cargo from the ship's tackle. I thought the statement was worded, ‘on board the vessel.’ We didn't handle any on board the vessel.

“Q. Now, where did you handle the cargo?

“A. We handled the cargo from the end of ship's tackle.

“Q. Where would that be?

“A. Well, it is where the ship's hook comes over the pier apron, and the cargo is disconnected there

(Deposition of Melvin M. Stewart.)

by two ship employees called sling men. It is then picked up by a longshore lift truck operator, normally, and carried into the warehouse, where it is ultimately handled on to the skin of the pier and thence delivered to the consignee.

“Q. Now, is the cargo still in transit, still in movement, when it comes over the side of the ship and reaches the end of the ship’s tackle? Is there still any movement before it reaches the warehouse?

“A. Well, it is in the process of movement from the ship’s hold to ultimately the skin of the dock. Physically, it stops and is disconnected from the ship’s hook, and we then pick it up.

“Q. To the skin of the dock. Did you not call it the ship’s hook?

“A. The end of the ship’s tackle.

“Q. Is that the skin of the dock, or is it placed inside the warehouse, where it is ultimately piled and stowed?

“A. Placed inside the warehouse.

“Q. In other words, then we have the discharging operation, a continuous flow of the ship’s cargo from the hold of [193] the ship to its ultimate place of rest on the skin of the dock in the warehouse, is that right?

“A. That is right. We perform a part of that function.

“Q. What part do you perform and did you perform on the P & T Adventurer on July 15?

“A. We performed the functions of terminal operator. We were compensated for handling the

(Deposition of Melvin M. Stewart.)

cargo, a part of which is picking it up from the end of the ship's tackle and carrying it into the pier and putting it on to the skin of the dock. We received charges for cargo moving across the pier, which is wharfage. We received service charges from the vessel which cover various receiving, delivery, and paper work items that we prepare at their request.

"Q. Now, I want to ask you, on the 15th of July, 1956, when you helped unload the P & T Adventurer, where was the first place of rest of the cargo that came off that vessel? Was it at the ship's side at the end of ship's tackle? Was that the first place of rest?

"A. Well, the place of rest in a normal terminal procedure is the place inside the warehouse.

"Q. And it isn't the first place of rest at the end of the ship's tackle, is that right?

"A. That is correct. I mean the cargo has to flow from there. It is in the process of movement.

"Q. It is in the process of movement from the ship's hold, is that correct?

"A. Into the warehouse, yes.

"Q. All right. Now I am going to refer to Exhibit A, which is entitled, 'Seattle Terminals Tariff Number 100,' and I am referring to Section 3-A, entitled, 'Handling,' and the first part is also entitled, 'Specific Rules and Regulations Pertaining to Handling.' Now, I would like to have you read what is stated in there as a definition of a handling

(Deposition of Melvin M. Stewart.)

charge. I would like to have you read it into the record."

The Court: That document is not in evidence. You may proceed.

Mr. Poth: Yes, it is in evidence, your Honor. I've offered it. It's been marked.

The Court: It may have been marked, but I do not recall ruling on it.

Mr. Poth: I wish to offer it at this time.

The Court: What is it that you offer?

Mr. Poth: Tariff No. 100.

The Court: There are two things that have that reference. Which exhibit of this court do you wish to offer?

Mr. Poth: It would be 3, your Honor.

The Court: Mr. Clerk, will you take the two [195] exhibits in question and let Counsel see them.

(Plaintiff's Exhibits Nos. 3 and 4 for identification were handed to Mr. Poth.)

Mr. Poth: I wish to offer at this time Plaintiff's Exhibit 3 and Plaintiff's Exhibit 4.

Mr. Howard: We also offer those, having produced them. We offer 3 and 4.

Mr. Poth: I wish to offer them at this time in evidence.

Mr. Howard: No objection.

The Court: Does that refer to Plaintiff's Exhibit 3 and also Plaintiff's Exhibit 4?

Mr. Poth: Yes, your Honor.

The Court: Each of them is now admitted.

(Deposition of Melvin M. Stewart.)

(Plaintiff's Exhibits Nos. 3 and 4 for identification, respectively, were admitted in evidence.)

[See pages 441-450.]

The Court: You may proceed to read the portion of the one that was referred to in the last question.

Mr. Howard: May I ask, your Honor, that the last question be re-read?

The Court: It starts at the bottom of Page 16 and ends at Line 4 on the top of Page 17.

Mr. Poth: Shall I commence reading the last question, your Honor? [196]

The Court: You may do so.

(The reading of the deposition of Melvin M. Stewart was continued as follows:)

"Q. All right. Now I am going to refer to Exhibit A, which is entitled, 'Seattle Terminals Tariff Number 100,' and I am referring to Section 3-A, entitled, 'Handling,' and the first part is also entitled, 'Specific Rules and Regulations Pertaining to Handling.' Now, I would like to have you read what is stated in there as a definition of a handling charge. I would like to have you read it into the record.

"A. (Reading) 'Handling Defined: A handling charge is a charge made against vessels, their owners, agents or operators, for moving freight from end of ship's tackle on the wharf to first place of rest on the wharf, or from first place of rest on the wharf to within reach of ship's tackle on the

(Deposition of Melvin M. Stewart.)

wharf. It includes ordinary sorting, breaking down and stacking on wharf.' ”

The Court: Would you cite the page of that exhibit, if it has a page, so that one can turn to that place in the exhibit and verify what has just now been read, Mr. Howard?

Mr. Howard: I don't have the exhibit before me, your Honor.

Mr. Poth: It states original page—— [197]

The Court: Let the one who is reading the answers state the place.

Mr. Poth: I'm sorry, your Honor.

The Court: And then if you object to the accuracy of the statement in that connection, let it be known, Mr. Poth.

Mr. Howard: That appears on original page 23 of Terminal's Tariff No. 100, being Plaintiff's Exhibit 3.

* * * * *

“Q. Now, is that a good description of what you did at Pier 48 for the P & T Adventurer, on the 15th of July, 1956?

“A. It is a good description of part of the job we did, yes.

“Q. All right. What other job did you do that is not mentioned there?

“A. Checking, receiving, and things of that nature.

“Q. I believe you are also referring, perhaps, to the [198] mooring at the pier?

“A. The charge for the mooring at the pier.

(Deposition of Melvin M. Stewart.)

“Q. But insofar as actual cargo handling is concerned, is that a description of the cargo handling operation that you performed for the P & T Adventurer?

“A. For the cargo that was handled on the pier, yes.

“Q. In other words, the first place of rest for that cargo is not where it is disconnected at ship's tackle, but instead, the first place of rest, the handling for which you are paid, is its final place of rest in the warehouse? Is that correct?

“A. That is correct.

“Q. In other words, you can't just dump the cargo alongside the ship and forget about it, can you? “A. No.

“Q. It has to be taken away to make room for the next load, is that right?

“A. That is correct. It has to be prepared for delivery to the consignee.

“Q. Now, I am going to ask you, were Mr. Cor-drays duties connected with this moving of the cargo from the ship's side at the end of its tackle and the carrying of the cargo to the first place of rest in the warehouse?

“A. Yes, he directed the employees who physically did that work. [199]

“Q. Now, do you recall whether or not any of the vessel's cargo, that is, the P & T Adventurer's cargo, was loaded directly into railway cars when it was at your Pier 48 on or about the 15th of July, 1956?

(Deposition of Melvin M. Stewart.)

“A. Yes, some of it was discharged direct to railway cars.

“Q. Now, are you paid for that?

“A. We are not paid a handling charge. We are paid a charge on the basis of labor employed and equipment utilized under conditions as set forth in that tariff.

“Q. What labor do you employ when it is loaded directly into a car from a ship?

“A. Push-bull operators,—operators of a vehicle that push the cargo under and away from ship’s tackle.

“Q. Anybody else?

“A. A blocker who blocks the car when it is moved.

“Q. Anybody else?

“A. A foreman who supervises those employees.

“Q. And would Mr. Cordray have been such a foreman? “A. Yes.

“Q. On the date I have mentioned?

“A. Yes, he would. He would have knowledge of the cargo moving directly into a car or into the warehouse. All of those employees are terminal employees.

“Q. Now, I believe you mentioned a part of his job in seeing that cargo was moved to its first place of rest [200] from ship’s tackle was the coordination of dock handling with the work aboard ship of handling cargo, is that correct?

“A. I don’t recall that. That is correct. I don’t recall if I made that statement or not.

(Deposition of Melvin M. Stewart.)

“Q. But that is correct? He has to coordinate the two operations together, is that right?

“A. Well, he has to coordinate to have terminal employees and equipment available at the end of ship’s tackle to keep the cargo moving.

“Q. Now, is it ever necessary to achieve that coordination that a dock foreman go aboard the vessel? “A. Yes, it is.

“Q. And I will ask you whether or not it is the custom and practice for a dock foreman to go aboard a vessel to give orders and to make arrangements for this coordination of ship’s tackle and dock equipment?

“A. Yes, it is a common practice.

“Mr. Poth: I have no further questions.

“Redirect Examination

“Q. (By Mr. Howard): Did I understand your answer to Mr. Poth’s question correctly that no work was done by employees of Olympic Steamship Company as terminal operator on the occasion [201] that we mentioned, until the cargo had been landed on the dock from the ship by stevedores employed by Seattle Stevedore Company?

“A. That is correct.

“Q. And the actual disconnecting of the cargo slings that suspended the cargo from the ship’s tackle was performed by sling men employed by Seattle Stevedore Company?

“A. That is correct.

“Q. —who were stationed on the dock at the

(Deposition of Melvin M. Stewart.)

point so-called 'at the end of ship's tackle'?

"A. That is correct.

"Q. Were you present on the early morning of July 15th when the accident occurred?

"A. Not at the time the accident occurred, no.

"Q. Do you know of your own knowledge the reason for Mr. Cordray's being aboard the vessel on that occasion?

"A. I was advised.

"Q. No; of your own knowledge?

"A. Of my own knowledge? Well, I wasn't there, so, no.

"Q. Mr. Stewart, with whom have you had occasion to discuss your testimony given today, before this deposition was taken?

"A. I have discussed it with both you and Mr. Poth.

"Mr. Howard: That is all the questions I have.

"Mr. Poth: I believe I have no further [202] questions." * * * * * [203]

FRANK W. WICK

called as a witness in behalf of plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Poth): Will you state your name, please?

A. Frank W. Wick.

Q. And where do you live, sir?

A. 10919 26th Avenue Southwest.

Q. And what is your occupation?

A. Longshoreman.

(Testimony of Frank W. Wick.)

Q. And how long have you been a longshoreman? A. A little over thirteen years.

Q. And were you working as a longshoreman on the morning of July 15, 1956?

A. If that's the morning Mr. Cordray was hurt, I was, yes, sir.

Q. And what ship were you working in connection with? A. The P & T Adventurer.

Q. And where was the P & T Adventurer located that morning? A. Pier 48.

Q. That's here in Seattle, Washington?

A. That's right.

Q. And what were your duties?

A. I was on the slings, what they call a sling man. [204]

Q. And who were you employed by?

A. Well, the Waterfront Employers. That's Pope & Talbot's ship.

Q. Now, you mentioned Waterfront Employers. Were you employed by any particular stevedoring company that's a member of the Waterfront Employers?

A. Yes, I was. I believe that was Rothschild, I believe. Now, I'm not sure about that. See, we work for quite a few different stevedoring companies and I wouldn't swear to which one it was.

The Court: Do you ever work for more than one during any one day, of any one working period?

A. I never have, no, sir.

The Court: You may inquire.

Q. (By Mr. Poth): Who pays you your wages?

(Testimony of Frank W. Wick.)

A. Waterfront Employers.

Q. Who paid you your wages for working that night of the 14th and 15th of July, 1956?

A. The Waterfront Employers.

Q. Well, now, what were your actual physical duties in connection with your work? Would you please describe them?

A. Well, if they are discharging cargo, we unhook the loads. If they are loading cargo, we hook up the loads.

Q. And in the discharging operation what happens when you [205] unhook a load? What's done with the cargo?

A. Well, that was general cargo. It would be on the spreaders. We have spreaders for that. They have cargo boards. It comes down on a cargo board and we have spreaders, one on each side of the cargo board that fits into slots, and we pull them out.

Q. Then what happens to the load?

A. Then it's picked up by the bull and taken in the warehouse.

Q. What's done with it in there, if you know?

A. Sometimes it's—they have dock gangs in there that discharge it off the boards. Sometimes it's put in there right on the boards and left.

Q. Now, did you—I believe you mentioned that Mr. Cordray was injured. A. That's right.

Q. Did you see him get injured?

A. No, I didn't.

(Testimony of Frank W. Wick.)

Q. What first did you see or hear, if anything, that apprised you of an injury?

A. The first I heard was somebody on the ship hollered "Look out" and I glanced up and when I did, I——

The Court: Now wait just a moment. Ask him another question.

Mr. Poth: Yes, your Honor. [206]

Q. (By Mr. Poth): What did you see or hear, if anything, aboard the deck of the ship in relation to an injury, if there was one?

A. I heard——

The Court: Do you mean at or about the time of its occurrence?

Mr. Poth: Yes, at or about the time.

Q. (By Mr. Poth): I might ask you first to fix the time to the best of your recollection.

A. I would say around fifteen minutes to five in the morning, around that, close.

Q. And what did you see or hear, if anything, at that time?

A. They was winging in the gear and I heard somebody holler "Look out", and at that time I glanced up and I seen somebody kind of fall forward, and all I could see was just the shoulders and the head. There was a high rail there and I was down below on the dock.

Q. What hatch was that?

A. Number two hatch.

Q. Then did you happen to see any piece of

(Testimony of Frank W. Wick.)

gear of any kind, nature or description come out onto the dock? A. Yes, sir.

Q. And how did that happen to come out to the dock, if you know?

A. Well, the ship foreman hollered down to stand in the [207] clear, and he threw it on the dock.

Q. Had anybody said anything to the ship's foreman or not?

A. Somebody on the dock, I don't know who it was, wanted to see the strap.

Q. You mentioned a strap. Just what was this piece of ship's equipment?

A. Well, it was a part of the tent gantline. It was the tent gantline strap and block.

The Court: I think Counsel would like you to give the jury an idea of what the thing is that you refer to as a strap. What is that?

A. Well, it's a block with a cable on it. It's about, oh, four or five feet long, and it hangs on the boom, and it has a line running through it, a rope line which hooks onto the tent, and it's for the tent. That's the reason they call it a tent gantline.

The Court: A strap. I do not know what one of those things is that you have mentioned in your last statement is a strap.

A. Well, it's a cable. It's a cable about five feet long hooked onto a block.

Q. (By Mr. Poth): And where is the cable attached? A. On the bottom of the block.

(Testimony of Frank W. Wick.)

Q. And where is it attached on the other end, the other end from the block end, ordinarily? [208]

A. It's on another block. Sometimes that cable is made fast to the boom, one end of it, with a shackle, and the block hangs down.

Q. And what was this strap or cable that you mentioned, what was it made out of, the one that came over the side of the ship that night?

A. It was made out of steel.

Q. Did you have occasion to examine it?

A. I did.

Q. And please tell the circumstances under which you examined it, how you came to examine it.

A. Well, when it was throwed on the dock I picked it up, and I looked the strap over and I broke a piece off of the end of one of the strands and crumbled it with my finger.

The Court: You did not mention strands when you defined "strap". What thing is the strand you last mentioned or these strands you last mentioned, or are they a part? Are they a part of anything you mentioned before by any other name?

A. They're part of the cable.

The Court: You called something a strap a short time ago. Will you refer this strand or these strands to that and say whether or not it had any connection with the strap? [209]

A. A strand is part of the strap, your Honor.

The Court: Is the strand you mentioned a part of the strap you mentioned?

A. Yes, sir.

(Testimony of Frank W. Wick.)

The Court: You may proceed.

Q. (By Mr. Poth): And you mentioned that it crumbled, is that right? A. That's right.

Q. And what condition, if any, did it appear to be in?

A. It was rusted practically all the way through.

Q. Now, before you on the witness stand is a block with a strap or cable attached to it. Would you please examine it? I'm referring to Defendant's Exhibit 4, I believe it is.

The Clerk: Defendant's Exhibit A-4 is the correct reference to that.

Mr. Poth: A-4.

Q. (By Mr. Poth): And does that also have a strap on it, Defendant's Exhibit A-4?

A. It does.

Q. Now, does that strap resemble the strap which you examined there that night?

A. It's a similar strap.

Q. Is it different in any way than the strap which you saw?

A. Yes. This strap here is not rusted out. This strap [210] here has lots of life in it yet. That strap I saw was rusted completely through.

Q. Now, directing your attention to the core of that strap there, is there any similarity between the core of that strap on Defendant's Exhibit A-4, referring particularly to the rope core, and the core on the strap which you inspected there that night?

A. I didn't see any core in that strap. It was gone.

(Testimony of Frank W. Wick.)

Q. What happened to the block after you inspected it, if you know?

A. I laid the block down by the rail there and the dock foreman was there and he picked it up and took it inside of the warehouse. That's the last I seen of it.

Mr. Poth: I believe I have no further questions.

The Court: You may cross examine.

Cross Examination

Q. (By Mr. Howard): Mr. Wick, I take it from your testimony that you were part of the stevedore gang that was working on the ship.

A. That's right.

Q. You and your partner, the other sling man, were the two members of that gang who actually physically were on the dock? [211]

A. That's right.

Q. The rest of your stevedore gang, by whom-ever you were employed, were working aboard the ship?

A. That's right.

Q. And you were working under the supervision of Mr. Peters, the stevedore foreman for the ship?

A. That's right.

Q. You were not working under the supervision of Mr. Cordray, the dock foreman?

A. I was not.

Q. And the cargo when it came off the ship came to rest on the dock and then it was taken over by the dock operator, is that correct?

(Testimony of Frank W. Wick.)

A. They don't classify the dock as the place of rest.

Q. At the point where you were working work by the stevedores ended, is that not true?

A. After we unhook the load, of course we have to watch and see that it don't fall or something happens to it until it gets into the dock.

Q. And then at that point you turn it over to the dock operator? A. That's right.

Q. Do you know whether there was any hatch tent hung on the P & T Adventurer the night of the accident?

A. No, sir, there wasn't. [212]

Q. How many nights or shifts did you work on that ship? A. That was the second shift.

Q. On the previous night do you know whether there had been any hatch tents hung on the ship?

A. No, I don't remember.

Q. Who would do that work if any hatch tents were hung?

A. The stevedores, longshoremen.

Q. Did you have any opportunity to inspect the upper portion of this strap as you described it after the accident occurred?

A. Which part do you mean?

Q. The part that was still hanging from the end of the ship's boom. A. No, sir.

Q. You never looked up there?

A. It wouldn't have done me no good. It was too high to see it.

Q. Did you look up? A. Oh, yes.

(Testimony of Frank W. Wick.)

Q. Did you see——

The Court: Pardon me. From what point did you look up?

A. From the dock.

The Court: You were working on the dock?

A. On the dock. [213]

The Clerk: Defendant's Exhibits A-7 and A-8.

(Two photographs were marked Defendant's Exhibits Nos. A-7 and A-8, respectively, for identification.)

Q. (By Mr. Howard): Did you see any part of the strap hanging from the tip of the boom at that time? A. I did not.

Q. What did you observe as to the condition of the lower part of the strap which was thrown out on the dock by someone on the ship, in so far as whether the strands were separated or still intact or wrapped around each other?

A. They was—well, that's kind of hard to say. The only thing I could say, they wasn't unraveled as much as this strap here.

Q. Were they unraveled some?

A. Yes, they was unraveled a little.

Q. How long have you worked as a longshoreman, Mr. Wick? A. Thirteen years.

Q. All on the Seattle waterfront?

A. That's right.

Q. Will you tell me, please, what would happen on a ship such as the P & T Adventurer if the lower end of the gantline was left secured to a cleat or the

(Testimony of Frank W. Wick.)

rail of a ship and an attempt was made to wing in the ship's boom? [214]

A. Do you want my opinion, sir?

Q. I'm asking you from your experience what would happen.

A. Well, that would involve the condition of the strap or the condition of the rope at the time.

Q. What would happen? Would something carry away?

A. Oh, it's bound to carry away. The rope if it was in poor shape would carry away before the strap, or if the strap was in poor shape it would carry away before the rope. [215]

* * * * *

Q. (By Mr. Howard): In one of those pictures before you, Mr. Wick, I'll ask you if you can make out a hatch tent gantline in position?

The Court: Answer yes or no.

A. Yes, sir, I see part of one.

The Court: Will you turn to the back side of that picture and see where the clerk's identifying mark is made and state what that mark is?

A. A-8.

Q. (By Mr. Howard): A-8? A. Yes, sir.

Q. And is that just a part of the hatch tent gantline [216] appearing in that picture?

A. That's right.

Q. Which part?

A. Well, it's the upper part.

Q. I'll ask you whether or not that appears the

(Testimony of Frank W. Wick.)

same as you observed it on the P & T Adventurer on the morning of July 15th?

A. I didn't observe it that morning.

Q. Now will you please refer to the other picture before you, which would be A-7. I'll ask you whether or not you can observe in that picture a complete hatch tent gantline and block in place?

The Court: Answer yes or no.

A. Yes, sir.

Q. (By Mr. Howard): Yes?

A. Yes, sir.

Q. Is that the same kind or type of hookup that you observed on the P & T Adventurer on July 14-15, 1956, before the accident?

A. Well, I didn't observe the hookup there that morning.

Q. Is that the same kind of a block that was observed by you when the portion of the strap was thrown down to you on the dock?

A. If it's a single block, it is.

Mr. Howard: I offer Defendant's Exhibit A-7.

Mr. Poth: May I see it again?

The Court: It will be shown to opposing Counsel, each of them.

(Defendant's Exhibits Nos. A-7 and A-8 for identification were handed to Mr. Poth.)

The Court: A-7 is offered.

Mr. Poth: May I ask through the Court, Counsel, whether or not A-7 is an enlargement of A-3?

The Court: Can you answer that? If so, do so, Mr. Howard.

(Testimony of Frank W. Wick.)

Mr. Howard: Yes, it is.

Mr. Poth: Well, I have no objection to it.

The Court: A-7 is now admitted.

(Defendant's Exhibit No. A-7 for identification was admitted in evidence.)

[See page 460.]

Mr. Howard: And I offer A-8 as an enlargement of A-2, which is already admitted.

The Court: Do you wish to make a statement of attitude, Mr. Poth?

Mr. Poth: As to the pictures?

The Court: Yes.

Mr. Poth: Yes. The attitude——

The Court: No, the last offer of A-8, is there any objection to it? [218]

Mr. Poth: No, I have no objection.

The Court: It is admitted.

(Defendant's Exhibit No. A-8 for identification was admitted in evidence.)

[See page 461.]

Mr. Howard: May I ask that those be passed to the jury at this time?

The Court: That will be done.

Mr. Poth: I—yes, all right.

The Court: You may proceed, and proceed with the questioning, however.

(Defendant's Exhibits Nos. A-7 and A-8 were passed to the jury.)

Mr. Howard: Very well, your Honor.

Q. (By Mr. Howard): Mr. Wick, do you know where the hatch tent gantline was secured for the

(Testimony of Frank W. Wick.)

number two starboard boom aboard the vessel before the accident occurred? A. I do not.

Q. Do you know whether or not it was released before the accident occurred? A. I do not.

Q. Do you of your own knowledge know what Mr. Cordray was doing at the position that you observed him aboard the vessel immediately before the accident? A. No, sir.

Q. Do you know who was driving the winches?

A. No, sir.

The Court: At this point we will take about a ten minute recess. The jury will retire to the jury room.

(The following proceedings were had in the absence of the jury:)

* * * * *

Mr. Howard: May I inquire of the Court whether there will be a conference with respect to instructions?

The Court: Why, of course. The rules call for it. The rules always are applied in that respect. They always have been in the past since the rules have been in effect, and there will be in the future, I [220] believe, here in this department of the court. That will not be done until all the evidence is in, however. I will say to Counsel on both sides in that connection respecting the forms of their requested instructions, it looks to me like each side has sprinkled into the forms requested by them a great amount of argument unnecessarily, showing a partisan approach to the subject. It makes it much

(Testimony of Frank W. Wick.)

more difficult for the Court to adopt, for instance, Counsel's form, which this Court likes to do, on a given principle of law. I take special pride in trying to use or find it appropriate to use in respect of the requests on both sides the forms which Counsel have suggested, because if it is appropriate, why then Counsel know exactly whether or not the form is pleasing to them or to either of them. In this case the Court has that impression, that each Counsel has, everywhere they could, put in an argumentative statement. I say everywhere they could, I mean in several places, prominent places, and that makes it more difficult for the Court to make the kind of use of the form that Counsel would like the Court to make, I believe. So I wish you to have that in mind. [221]

* * * * *

(The following proceedings were had within the presence of the jury:)

The Court: All are present as before the recess. You may resume the interrogation of the witness.

Mr. Howard: May the witness be handed Exhibits A-2 and A-3?

The Court: That will be done.

(The exhibits were handed to the witness.)

Q. (By Mr. Howard): Mr. Wick, you have stated and identified a complete hatch tent gantline and block in the picture now admitted in evidence as Defendant's Exhibit A-7. Do you find before you a smaller picture corresponding to that, A-3?

(Testimony of Frank W. Wick.)

A. Well, this is so wrapped up around in the boom up there it's hard to tell what it is.

Q. Will you state, Mr. Wick, whether or not the complete hatch tent gantline and block that you did describe and find in Defendant's Exhibit A-7 corresponds, as to the block, with the block now before you on the witness desk as Defendant's Exhibit A-4, that is the block itself before you on the desk? Would you like to look at the larger picture? [222]

* * * * *

A. This don't look to me like a tent gantline block.

Q. (By Mr. Howard): Which one are you referring to? A. A-2.

Q. Would you please look at A-3?—I beg your pardon. Please look at A-2. In the background do you see a boom with some tackle, blocks and cables extending down from the tip of the boom?

A. Yes, sir.

Q. Can you identify one of those as a hatch tent gantline? A. I cannot.

Q. Would you look at A-3 and the corresponding boom in the background?

A. I don't see no tent gantline block there either.

Q. Well, then I'll ask you to look at Exhibits A-7 and A-8, the ones the jury have just completed their examination of. [223]

* * * * *

Q. (By Mr. Howard): Mr. Wick, before the morning recess you testified that you observed a

(Testimony of Frank W. Wick.)

complete hatch tent gantline in Defendant's Exhibit A-7. I would ask you now to take a pencil or a pen and mark the gantline that you were referring to.

A. I observe here part of the gantline, the broken part, hanging up at the tip of the boom.

Q. I ask you then if before the recess you did not also observe a complete hatch tent gantline extending from another boom?

A. Not a complete hatch tent gantline, sir.

Q. Well, now will you look at Defendant's Exhibit A-7 and as to the boom in the background I'll ask you if you do not observe a complete hatch tent gantline? A. I do not.

Q. What is the gear extending from the tip of the boom in the background down to positions along the rail of the ship?

A. That's the guy line.

Q. What is the block extending from the tip of the boom in the background?

A. That would be the gin block.

Q. And below that there are two other blocks. What are [225] those?

A. Well, the guy blocks, is what they are.

Q. Are both of them guy blocks?

A. They're both used for the same purpose.

Q. From the same boom?

A. From the same boom.

Mr. Howard: That's all.

The Court: Any redirect?

Mr. Poth: May I see A-7, please, your Honor?

The Court: That will be done.

(Testimony of Frank W. Wick.)

(The exhibit was handed to Mr. Poth.)

Redirect Examination

Q. (By Mr. Poth): Now, on the morning of the 15th of July, 1956, what position was the boom in on the P & T Adventurer when you last saw it? The boom I'm referring to is the yard boom, the one that had been extending over the dock.

A. The yard boom was swung in over the ship, inside of the rail of the ship, and it was also—if you're referring to that picture——

Q. No, I'm just referring now to the position of the boom as you saw it last.

A. The boom was high and inside of the ship, inside of the rail. [226]

Q. I didn't catch the——

A. Inside of the rail of the ship and high up.

Q. High up? A. Yes.

Q. What do you mean by "high up"?

A. Well, when they're working one end of the hatch, like the after end, they have to boom high so the——

The Court: Yes, but what do you mean by "boom high"?

A. Well,——

The Court: Do you mean you put both ends as far up in the sky as you can get them, or does it mean one end, or if so, to what extent, and so on?

A. The boom itself, the whole boom, or the top of the boom has to be high enough to reach one end of the hatch. If they're working the after

(Testimony of Frank W. Wick.)

end, of course that—then the gear and the boom is aft, then the boom has got to be higher. If they're working the forward end of the hatch and they want to reach the forward end, they lower the boom down to reach the forward end, and they was working the after end of the hatch at this time, so the boom was high up.

The Court: That is, do you mean the tackle end or the end that was fast to the ship's structure? A. The tackle end of the boom. [227]

The Court: And by that do you or do you not mean the end of the boom to which was attached the tackle through which lines and cables ran by means of pulleys and blocks, and so forth?

A. The end that was high——

The Court: Answer yes or no. Read the question, Mr. Reporter, "Do you or do you not," and so forth.

(The reporter read the Court's last question.)

A. Yes, sir.

* * * * *

Q. (By Mr. Poth): Now I'll ask you again. State whether or [228] not when the boom is high, as you have expressed it, it is closer to or further away from the mast or Samson post.

A. The tip of the boom where the blocks and gear is hanging, if the boom is lowered it would be farther away from the Samson post. If it was raised up it would be closer.

Q. Is it possible to lower these booms down

(Testimony of Frank W. Wick.)

to the deck of the ship where you can work on them? A. Yes, sir.

The Court: Would Counsel by a proper question give the witness a chance to advise this jury of what the words "Samson post" mean or refer to?

Mr. Poth: Yes, your Honor.

Q. (By Mr. Poth): What is a Samson post?

A. Well, it's referred to also as a king post. It's——

The Court: K-i-n-g, is that the way you spell the last word?

A. Yes. It's stationary, straight up and down, and anchored to the deck, and the boom itself is made fast with a ring around this Samson post with a king post through that to hold it in place so it can't move from that one position, only back and forth, swing back and forth.

The Court: Compare it to the original sailing ship device serving the same purpose as you conceive this [229] Samson post serves.

A. Well, your Honor, I don't know anything about a sailing ship.

The Court: You may inquire.

Mr. Poth: Now I wish, your Honor, to give the witness A-7.

The Court: It has been admitted in evidence, Defendant's Exhibit A-7.

(The exhibit was handed to the witness.)

Q. (By Mr. Poth): Now I'd like to have you tell the Court and jury what difference, if any, you see in picture A-7 in relation to the position of the

(Testimony of Frank W. Wick.)

boom there in that picture and the position that it was in when you last saw it on the morning of July 15, 1956.

A. Well, this boom here at this time is lowered a lot farther down than the one I seen, and also this here is hanging over the side, which it wasn't in that position.

Q. Now, as to the surroundings in which that picture was taken, are they the same surroundings that you last saw the ship in?

A. No, sir. This ship here is out in the water. She's not tied up to the dock from this side that I can see.

Q. Do you recognize any of the landscape in that picture?

A. Well, it looks like Alki Point over there.

Mr. Poth: I believe I have no further questions.

Recross Examination

Q. (By Mr. Howard): You have A-7 before you, Mr. Wick. Is there a Samson post showing in that picture? A. No.

Q. No Samson post? A. No, sir.

Q. You have referred to a gin block. Is there a gin block appearing in that picture?

A. I can't see it.

Q. You have referred to a guy. Is there a guy appearing in that picture? A. Yes, sir.

Q. Would you take a pencil or pen and draw an arrow to the guy to identify it? [231]

* * * * *

(Testimony of Frank W. Wick.)

(Witness marks on Defendant's Exhibit A-7.)

Q. (By Mr. Howard): In addition to the guy that you have marked is there also a preventer?

The Court: Answer yes or no.

A. That would be hard to say. There's a running part of that line there. I see another line there which could be the preventer, but there's also another running part onto the guy line which could be behind the rest of them lines there.

Q. (By Mr. Howard): Would you mark the word "Guy" alongside where you marked the guy on Defendant's Exhibit A-7?

(Witness marks on Defendant's Exhibit A-7.)

Q. Now would you again refer to A-7, and I'll ask you again to look at that picture closely and tell me whether or not there is not a Samson post or a king post appearing in the picture.

A. If that is a Samson post there with a ventilator on top, it could be. That there is a little unusual for that type.

Q. Is there a boom extending out from the bottom such as you described?

A. It looks like it is.

Q. Is there a block at the top from which there is some part of the cargo-handling gear extended?

A. Yes. [232]

Q. Would that not be a king post or a Samson post? A. It probably is.

Q. Would you mark it, please?

A. There's also a ventilator on there.

(Witness marks on Defendant's Exhibit A-7.)

(Testimony of Frank W. Wick.)

The Court: If the line comes to the point from a position off the picture proper, will you at that place, if it does not mar something else on the picture, write the word that says what it is?

A. I wrote here, your Honor, "Samson post".

The Court: All right.

Q. (By Mr. Howard): Now would you look, please, at Defendant's Exhibit A-8?

(The exhibit was handed to the witness.)

Q. Can you state whether or not there is a gin block visible in that picture?

A. Well, it's awful blurred if it is.

Q. And will you state again whether or not there is any hatch tent gantline or any part of a hatch tent gantline visible in either one of those pictures?

A. There is a part of a hatch tent gantline.

Q. Would you encircle with a pen the part which is visible on A-8?

A. Well, that would be kind of hard to do here.
(Witness marks on Defendant's Exhibit A-8.)

Q. And mark it "Gantline".

(Witness marks on Defendant's Exhibit A-8.)

Q. Now referring to the boom in the background of that picture, not to the one on which you have marked the gantline or the buy but the boom in the background, a portion of which is visible, I'll ask you if there is a portion of a hatch tent gantline visible in that picture?

A. This same one that I marked?

Q. A-8.

(Testimony of Frank W. Wick.)

A. Yes, sir, there's a part of a tent gantline strap here.

Q. Would you mark that, please?

A. I just got through marking it.

Q. I'm referring to the boom in the background.

A. There's only one boom on here.

* * * * *

Q. I was referring to the wrong picture. I beg your pardon, Mr. Wick. Refer to A-7, please. The boom in the background, I'll ask you if there is not a part of a hatch tent gantline appearing in that picture? A. I can't tell. [234]

Q. Again referring to A-7, is there not a second Samson post available on the side of the ship where the cargo is being worked?

A. Yes, there is.

Q. Would you mark that "Samson Post", please? A. If that is a Samson post there.

(Witness marks on Defendant's Exhibit A-7.)

Mr. Poth: Your Honor, the witness I believe stated, "If it is a Samson post." He's not sure if it's a Samson post.

The Court: The Court wishes you to mark only that which you say in your testimony is a Samson post, not that which Counsel may by asking a question whether it is or not intimate to you that he may think or not think that it is.

Q. (By Mr. Howard): Mr. Wick, before you mark it I will ask you as to the cylindrical object with a ventilator on top appearing toward the

(Testimony of Frank W. Wick.)

starboard side of this ship forward of the bridge or midship house in Defendant's Exhibit A-7, do you observe a block and a piece of the cargo-handling gear, a cable extending from a point towards the top of that cylindrical object?

A. There is a cable running there, but I'm not sure whether it's made fast to that cylinder object there.

Q. Where does it run to? [235]

A. It runs out to the boom.

Q. Will you state whether or not that is a king post or Samson post? A. I couldn't tell.

Q. Very well.

Mr. Howard: That's all.

* * * * *

(Defendant's Exhibit No. A-8 was handed [236] to the witness.)

Redirect Examination

Q. (By Mr. Poth): Where you have marked at Counsel's direction the word "Gantline", I'll ask you, are you able to tell from that picture what those strands you see there are?

A. They are strands from the tent gantline.

Q. From what?

A. From the tent gantline.

* * * * *

Q. (By Mr. Poth): I'll ask you, are you able to tell in that picture what that material is made of?

Mr. Howard: I object as repetitious.

(Testimony of Frank W. Wick.)

The Court: The objection is overruled.

A. No.

Q. (By Mr. Poth): You are not? A. No.

Q. I'll ask you, can you tell whether that is rope or wire? A. I cannot. [237]

Mr. Poth: I have no further questions.

Mr. Howard: No further questions.

The Court: Step down.

(Witness excused.)

* * * * *

FLOYD COPELAND

called as a witness in behalf of plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Poth): Will you state your name, please? A. Floyd Copeland. [238]

* * * * *

A. 2302 32nd Avenue South.

Q. That's in Seattle here? A. Yes.

Q. And what is your occupation?

A. I'm a foreman on the waterfront.

Q. And how long have you been a foreman?

A. About fourteen years.

The Court: Give him a chance to say what kind of a foreman.

Q. (By Mr. Poth): And a foreman of what?

A. I'm a dock foreman.

The Court: Will you describe what a dock foreman does? What kind of work does he do?

(Testimony of Floyd Copeland.)

A. Well, you handle men, boarding, unboarding cargo, and handling cargo to and from the ships.

The Court: With respect to whose work, whose else's work, if anyone else's work, are you concerned as a foreman? Classify the type of workman whose work it is that you are a foreman in respect to.

A. I handle the bull drivers, I handle——

The Court: Who are they?

A. They are men——

The Court: How is their work classified, generally speaking? Classify it.

A. Well, they—— [239]

The Court: Are they seamen on board a ship or are they some other kind of a workman?

A. They are workmen on the dock or on the ship boarding, unboarding cargo, hauling cargo on to and from the ships.

The Court: Are they ever referred to as any particular class of workmen? If so, what class of workmen are they?

A. Well, they are longshoremen.

The Court: How are you classified, if you know, as to your work?

A. Well, I'm classified as a foreman.

The Court: Foreman of whom?

A. Of the longshoremen and the dock men.

The Court: You may inquire.

Q. (By Mr. Poth): And in the course of your employment as a foreman do you ever do any actual physical labor as a longshoreman? A. No.

(Testimony of Floyd Copeland.)

Q. What companies, if any, do you work for?

A. Well, I work for most all the employers on the Seattle waterfront.

Q. Do you work for Seattle Stevedoring Company? A. I have.

Q. And what have you done for Seattle Stevedoring Company? [240]

A. I've handled the bull drivers on loading and unloading ships for them.

Q. Now, when you worked for Seattle Stevedoring Company were you handling the longshoremen on the dock or the longshoremen on the ship?

A. On the dock.

Q. And who, if anyone, would be doing the longshoring aboard the ship, whose employees, when you worked for Seattle Stevedoring Company?

A. Well, they have foremen on the ship to handle the ship's work.

Q. No, I mean as to the employer's standpoint.

A. I don't get your question.

Q. Well, when you work for Seattle Stevedoring Company and you supervise longshoremen on the pier or dock handling cargo to or from a ship, who would be the employer of the longshoremen aboard the ship?

Mr. Howard: At what place and when?

Mr. Poth: When he is working on the dock.

Mr. Howard: Well, I object to the question, your Honor, unless it is fixed as to the time and place. They might have different arrangements at different locations.

(Testimony of Floyd Copeland.)

The Court: The objection is sustained.

Q. (By Mr. Poth): Well, can you remember the last time you [241] worked for Seattle Stevedoring Company?

The Court: Do you mean to ask him when it was if he does remember?

Mr. Poth: Yes.

A. I don't know the exact date. I've worked for them three or four times since the Port went out of the handling business.

Q. (By Mr. Poth): Do you remember where it was that you worked for them the last time?

A. I think the last time was at Pier 29.

Q. And do you remember the name of the ship?

A. No, I don't.

Q. Do you remember who employed the long-shoremen aboard the ship?

A. Seattle Stevedoring.

Mr. Howard: That's objected to, your Honor, unless it's fixed as to time.

Q. (By Mr. Poth): Do you remember the approximate time, the date?

A. Well, as near as I can remember I think it was around the middle of last month.

Mr. Howard: I renew my objection because of the time being considerably different than the time involved in this accident, and he has stated that the Port went out of the handling business. [242]

The Court: The objection is sustained.

Mr. Poth: Well, I'll ask it this way, your Honor.

(Testimony of Floyd Copeland.)

Q. (By Mr. Poth): How many years have you been on the waterfront?

A. Well, I've been a registered longshoreman and foreman since 1933.

The Court: On what waterfront? I think he is talking about——

The Witness: On the Seattle waterfront.

Q. (By Mr. Poth): Now, are you familiar from your experience as a longshoreman and as a supervisor, supervising foreman, with the employer-employee relationships in respect to the handling of cargo aboard ships and the complementary receiving of that cargo and handling it to its first place of rest on piers or docks?

A. Yes. Handling the longshoreman——

Mr. Howard: He has answered the question, your Honor.

The Court: The objection is sustained. You may ask him another question.

Q. (By Mr. Poth): Now I'll ask you whether or not there is an absolute custom that the longshoremen employed on the dock are always employed by a different employer than the longshoremen working aboard a ship at a particular [243] time?

Mr. Howard: Now, I object to that question on several grounds. First, because it is not fixed as to any time. Second, because it is not fixed at any dock. I will limit my objections to those.

The Court: The objections are sustained.

Q. (By Mr. Poth): Well, are you familiar gen-

(Testimony of Floyd Copeland.)

erally with customs on the Seattle waterfront, without respect to any particular dock or any particular time? A. Yes.

Q. Generally what is the custom and practice on the Seattle waterfront in relation to the employment by particular employers or by two sets of employers——

The Court: Do not make gestures, please, Counsel.

Mr. Poth: I'm sorry, your Honor. I'm very sorry, your Honor.

The Court: Proceed.

Q. (By Mr. Poth): ——between two sets of employers or one set of employers, what is that custom?

Mr. Howard: The same objection.

The Court: The objection is overruled.

Q. (By Mr. Poth): Would you please state what that custom is as you know it?

A. Well, as a rule the ship is worked by one company and the [244] dock is worked by another company, and they handle the cargo to or from the vessels.

Q. You say generally. Are there exceptions to that rule? A. Yes.

Q. What are those exceptions?

A. Well, sometimes——

Mr. Howard: My objection is renewed, your Honor.

The Court: The Court understands that Counsel intends to inquire regarding the customs and that

(Testimony of Floyd Copeland.)

he still does, but it does not so appear by his questions and it does not appear that the witness has been qualified by proper questioning as to the last question in the field with which the last question is concerned.

Mr. Howard: May I also make my objection on the basis that the question was whether there was an absolute custom without fixing time or place, to which I have objected, absolute custom. Now Counsel is inquiring about exceptions to a general custom.

The Court: The objection is sustained as to the last question, with leave to ask him further proper questions.

Q. (By Mr. Poth): I'll ask you, are you familiar with the custom and practice of employing employees, longshoremen, aboard a ship and longshoremen aboard a pier for the [245] American President Lines here in the City of Seattle?

Mr. Howard: I object to that as not relevant.

The Court: That objection is sustained.

Q. (By Mr. Poth): Well, I'll ask you, have you worked for American President Lines?

A. No, I haven't.

Q. Have you worked for Seattle Stevedoring Company? A. I have.

Q. Are you familiar with the custom and practice of the employment of longshoremen and stevedores aboard a ship and aboard a dock as of the period of time comprising July 15, 1956?

Mr. Howard: I renew my objection.

(Testimony of Floyd Copeland.)

The Court: The objection is sustained.

Q. (By Mr. Poth): Where did you work yesterday? A. I didn't work yesterday.

Q. Where did you work the last time you worked?

A. For Griffiths & Sprague at Pier 51.

Q. And what did you do there?

A. I was a foreman on the dock.

Q. And what was the name of the ship?

Mr. Howard: Objected to as not material or relevant.

The Court: The objection is overruled. If you recall the name of the ship, will you state it, Mr. [246] Copeland, if a ship was involved in your work. You have not—the objection is sustained.

Mr. Poth: Yes, your Honor. You have sustained the objection, your Honor?

The Court: I do, because it contains a factual assumption that has not been proved or testified to.

Mr. Poth: All right.

The Court: Namely, that there was a ship involved in this dock work that this——

Mr. Poth: All right.

Q. (By Mr. Poth): Was there any ship involved in that dock work?

A. Yes, there was.

Q. And what was the name of the ship?

A. H-e-i-y-o Maru, Heiyo Maru.

Q. Heiyo Maru, and where did you perform this work? A. At Pier 51.

Q. And who operates Pier 51, if you know?

(Testimony of Floyd Copeland.)

A. Griffiths & Sprague Stevedoring Company.

Mr. Howard: I object to this line of questioning as not material or relevant to the issues in this case.

Q. (By Mr. Poth): And who employed——

The Court: The Court has no way of knowing whether or not the question that he intends to ask [247] —the Court does not wish you to go on and take up a lot of time, valuable time, too, in asking questions that are not going to result in something material. I would like to know along what issue you wish to inquire eventually of this witness, if not now.

Mr. Poth: Well, I admit I've been a little surprised by the witness, your Honor, but what I wish to establish is that——

Mr. Howard: Well, I'm going to object to that.

The Court: It is a question of what issue in this case do you seek to inquire of this witness.

Mr. Poth: The issue in this case is to establish that——

The Court: No, the Court does not ask you to say what you are going to establish. The Court asks you to say on what issue do you seek information from this witness by proper interrogation.

Mr. Poth: On common employment in the interests of the ship.

The Court: Do you mean you are going to try to prove custom on some question? Have you pleaded that custom? If so, in what language have you pleaded it?

(Testimony of Floyd Copeland.)

Mr. Poth: I've stated that the plaintiff is a longshoreman and the defendant has taken the position that he is not a longshoreman because he was handling [248] cargo on the dock.

Mr. Howard: Well, that is the issue, your Honor, and Mr. Poth has fairly stated it.

The Court: The Court will hear proper questions upon that. I think you should find out in the first place whether in some field relating to that issue you hope to show this witness qualified. If so, proceed to ask him some questions.

Mr. Poth: Your Honor, I wish to show that often there is a common employer between the dock longshoremen and the ship longshoremen.

The Court: Do you seek to show a custom pleaded by you that there may be and often is a common employment? Where are the words in your pleadings which tender that issue?

Mr. Poth: That all goes to the evidence, your Honor, of the allegation that he is a longshoreman. Counsel has taken——

Mr. Howard: No custom is pleaded so far as I can recall, your Honor.

The Court: Do you maintain that under the law a custom must be pleaded before the issue is tendered? I ask Counsel to consider that further during the noon hour in view of the objection and let the Court know. I will meet with Counsel in this courtroom at 1:45. The [249] jurors are excused until two o'clock and will now retire.

(The following proceedings were had in the absence of the jury:)

The Court: I wish for Counsel to be prepared to first assist the Court to determine whether it is necessary to plead a custom expressly in order to be able to introduce evidence as to it, and then further is there one so pleaded here. That is not a very difficult question and both sides and the Court ought to be able to state their final position on it without very much effort, but I wish you to be certain of your position on it so that I can have the benefit of it at 1:45 here in this courtroom.

The Court and all those connected with this case are excused until two o'clock this afternoon, provided the Court will meet with Counsel in the case for the purpose limited as stated.

(Thereupon, at 12:08 o'clock p.m., a recess herein was taken until 1:40 o'clock p.m.) [250]
The Court: Call the next plaintiff's witness.

FLOYD COPELAND

resumed the stand.

The Court: You have already been sworn, Mr. Copeland.

Direct Examination—(Continued)

Q. (By Mr. Poth): Now, Mr. Copeland, where are longshoremen obtained to work on the Seattle waterfront?

A. Where are they obtained?

Q. Yes. [295]

(Testimony of Floyd Copeland.)

A. From the longshore hall.

Q. And who operates that hall?

A. Well, it's operated between the employers and the longshoremen.

Q. Whereabouts is it located?

A. At Western Avenue and University Street, I believe.

Q. How many employers, if you know, are there of longshoremen here in this port?

A. Pardon?

Q. How many employers of longshoremen are there in this port, if you know?

A. How many employers?

Q. Yes.

A. That employ longshoremen?

Q. Yes.

A. Oh, I have no idea. Forty or fifty, I would say.

Q. Can you tell me whether or not the longshoremen that are used on the ship and on the dock are called out of this same hiring hall?

A. Yes, they are.

Q. How are you employed? Who hires you?

A. I'm employed through the hiring hall.

Q. What hiring hall?

A. The foremen's hiring hall.

Q. Is that the same as the longshoremen's hiring hall? [296]

A. No.

Q. Where is the long—the foremen's hiring hall located?

A. First and Yesler.

(Testimony of Floyd Copeland.)

Q. And what companies have you worked for in the last several years here?

A. Well, most all of them. All of the——

Q. Could you name them for me, please?

A. Well, I've worked for the Port of Seattle and Olympic Steam, the Matson Line, Griffiths and Sprague, American Mail Line,——

Q. Just a minute, you're getting a little ahead of me. Griffiths and Sprague, American Mail Line,——

A. Rothschild Stevedoring Company.

Q. All right.

A. Griffiths and Sprague Stevedoring Company.

Q. All right. Who else?

A. And American Mail Line.

Q. All right.

A. I named that, I believe. And Rothschild Stevedoring Company, and the Salmon Terminals.

Q. The Salmon Terminals?

A. Yes. Also the Barge Line.

Q. Where?

A. The Barge Line at Ames Terminal.

Q. The Barge Line. What is this Barge Line operation, if [297] you know?

A. Well, they load and unload barges for Alaska.

Q. When you say "Barge Line", is that the name of a company? A. Yes.

Q. And do they own the barges or do they not own them?

A. Yes, the Barge Line I believe owns the barges.

(Testimony of Floyd Copeland.)

Q. And who hires the longshoremen there at the Barge Line? A. The Barge Line.

Q. The Barge Line, and where do the longshoremen work at the Barge Line?

A. On the dock and on the barges.

Q. All right. Now, Matson Line. Where is the Matson Line located, if you know?

A. At Pier 46.

Q. Is that the Matson Line that owns ships?

A. It is.

Q. Ships that go to Hawaii and Australia?

A. That's right.

Q. Now, do they employ longshoremen?

A. Yes.

Q. And where do they employ the longshoremen? A. From the longshore hall.

Q. And where do they use them?

A. On the ship and on the dock.

Q. Now, Griffiths and Sprague. What sort of an outfit is [298] Griffiths and Sprague?

A. They are stevedoring contractors and they also have Pier 50 and 51.

Q. Where do they get their longshoremen?

A. From the longshore hall.

Q. Then where do they utilize them?

A. On the ships or on the dock.

Q. American Mail Line. Is that the American Mail Line that we commonly know that operate the American Mail Line ships? A. That's right.

Q. Now, do they hire longshoremen?

A. They do.

(Testimony of Floyd Copeland.)

Q. Where do they get their longshoremen?

A. From the longshore hall.

Q. And where do they use these longshoremen?

A. On the ship and on the dock.

Q. Now, Rothschild Stevedoring Company.

What sort of a company is that?

A. That's a stevedoring company.

Q. And do they use longshoremen?

A. Yes.

Q. And where do they employ their longshoremen? A. The longshore hall.

Q. And how do they utilize them? [299]

A. On the ship or the dock.

Q. Would you please describe to us how a discharging operation of cargo works?

A. The discharging——

Q. So far as the flow of the cargo is concerned.

Mr. Howard: I object to that question on the grounds as heretofore stated. It's not specified as to the time or place and it hasn't been established that this witness was present at the time of the accident in question.

The Court: Sustained, subject to the right to supply additional information.

Q. (By Mr. Poth): Have you ever seen a ship unloaded? A. Yes, I have.

Q. Where is the cargo found, if there is any cargo, when the vessel comes to the pier here in Seattle?

Mr. Howard: I object on the same basis.

The Court: I think you ought to go into the

(Testimony of Floyd Copeland.)

knowledge of the witness before you ask him that question.

Mr. Poth: All right.

Q. (By Mr. Poth): How long have you been a longshoreman?

A. Well, I've longshored from about — steady from 1933 until about 1943.

Q. And then what happened?

A. Then I became a foreman. [300]

Q. And as a longshoreman—was this a foreman of longshoremen? A. Yes.

Q. And as a longshoreman and a foreman of longshoremen have you been around piers and docks and ships? A. I have.

Q. And have you ever seen any cargo in connection with those ships and docks?

A. Yes, I have.

Q. And have you ever actually engaged in the handling of the cargo? A. Yes.

Q. Have you observed where steamships keep their cargo? A. Yes.

Q. Where do they generally keep it?

Mr. Howard: I object to that form of question as being too general. We're getting back into the same realm that we were before, your Honor, custom and usage.

Mr. Poth: Well, your Honor, I'll withdraw the question.

The Court: That may be done.

Q. (By Mr. Poth): Do you know what the hold of a vessel is? A. Yes.

(Testimony of Floyd Copeland.)

Q. And what use does the hold of a vessel have, if anything? What is the hold of a vessel used for?

A. For stowage of cargo.

Q. Pardon? A. For stowage of cargo.

Q. All right. What is cargo?

A. Well, it's a lot of commodities.

Q. Pardon?

A. It amounts to a lot of different commodities.

Q. All right. Now, have you observed in your experience as a longshoreman what happens to cargo that's in the hold of a vessel when it comes in here to a pier in Seattle?

Mr. Howard: Same objection.

Mr. Poth: Well, I'll withdraw the question if Counsel objects and state something else in order to save the Court's time.

Q. (By Mr. Poth): This cargo which you have mentioned, do you ever see it in the holds of vessels? A. Yes, I have.

Q. And is that cargo—have you ever seen cargo taken out of the holds of vessels? A. Yes.

Q. And under what occasions have you seen it taken out? A. What occasions?

Q. Yes.

A. Well, I've seen it in a lot of different occasions, I've [302] seen them discharging cargo.

Q. Oh, I'll withdraw that question. Do they ever desire to unload that cargo when it comes in here in the hold of a vessel?

Mr. Howard: I object to that question, your

(Testimony of Floyd Copeland.)

Honor. We're getting back into the same thing again, your Honor.

The Court: That objection is sustained. Have in mind the Court's ruling on the——

Mr. Poth: Well, your Honor, it would save a lot of time if I could just ask him how they unload this cargo that's in these vessels.

The Court: That may be asked.

Mr. Poth: All right.

Q. (By Mr. Poth): In the loading and unloading of cargo what do you understand to mean by "first place of rest"?

Mr. Howard: I object to that.

The Court: That is sustained. If you want to ask him this question that was approved just a moment ago, you may do so.

Mr. Poth: All right. Will the court reporter please read the question back?

(The reporter read back the following statement by Mr. Poth: "Well, your Honor, it would save a lot of [303] time if I could just ask him how they unload this cargo that's in these vessels.")

Mr. Howard: I object to that question, your Honor. It's very much too broad. It's not tied down to this instance at this dock at this time.

The Court: The Court understood that you had no objection to it. If that is not the case, then you may proceed.

Mr. Poth: All right.

(Testimony of Floyd Copeland.)

The Court: I mean you may proceed to ask another question.

Q. (By Mr. Poth): What is a cargo-carrying vessel?

A. What is a cargo-carrying vessel? Well,—

Q. Just describe it, please.

A. Well, it's a ship that has holds in.

Q. Holes or holds? A. Holds.

Q. Holds. That's h-o-l-d? A. d-s.

Q. All right. And do you know what it's used for, if anything?

A. Oh, it's used for stowing cargo in and discharging it from the vessel.

Q. What means, if any, have you observed are employed to [304] take the cargo out of the holds of vessels?

A. Longshoremen are employed to take it in and take it out.

Q. All right. And do they use any sort of gear to do that?

Mr. Howard: Objected to as leading.

Q. (By Mr. Poth): Well, what do they use besides their own hands?

A. Well, they use cargo boards, sometimes they use slings, whatever they need.

Mr. Howard: I object to all this line of questioning on the grounds that it is sometimes they do this, sometimes they do that. I can't see that there is any relevancy or materiality to what they do on any other occasion or at any other locality than the dock

(Testimony of Floyd Copeland.)

and the time in question. We have witnesses here who have testified to that, your Honor.

The Court: The Court directs that you proceed to some other inquiry with this particular witness.

Mr. Poth: All right.

Q. (By Mr. Poth): Were you aboard or around the S. S. P & T Adventurer on the night of the 15th, 14th and 15th of July, 1956?

A. I believe I started that vessel and then they sent Mr. Cordray up there, and we had two ships at the dock and I told him to take the P & T vessel.

Q. What was your job that night? [305]

A. I had a ship on the other side, a Grace Line ship.

Q. Now, did you take cargo off your ship that night or did you load it out?

A. Well, I believe, as I remember it, it was discharging and loading, both.

Q. Now, the cargo that you took off of your ship, where was the first place of rest of that cargo?

A. On the dock was the first place of rest.

Q. Was that at ship's side?

A. No, it's in the dock.

Q. It was on the dock. Well, how was it taken away from ship's side?

A. I believe on the ship I worked it was taken away on boards.

Q. Through what instrumentality, if any?

A. Well, by lift bulls from the ship's tackle into the dock.

(Testimony of Floyd Copeland.)

Q. And who had charge of the men taking it away from the ship's side? A. I did.

Q. You did? A. Yes.

Q. Now, what job did Mr. Cordray have?

A. He was the foreman on the P & T ship.

Q. And what phase of the cargo operations did he have control of? [306] A. The dock.

Q. And what was done on the dock?

A. Well, they have just the bull drivers at night, they just work the bull drivers, and take the cargo from the ship and pile it on the dock.

Q. And where is the first place of rest of the cargo that comes from the ship's hold?

Mr. Howard: Objected to as repetitious.

Mr. Poth: I'm speaking about the P & T Adventurer, your Honor, now. I asked him about his ship.

The Court: Then the objection is overruled. If he knows what the answer to that question is with respect to this P & T Adventurer on the night in question.

Mr. Howard: I add that to my objection.

The Court: You cannot answer unless you know what it was on that occasion, Mr. Copeland. If you do know what it was on that occasion, then you can answer.

A. Well, it was general cargo, and I believe they had some steel on the ship, which they usually do.

Mr. Howard: I move to strike the answer.

The Court: The objection is sustained and the motion is granted.

(Testimony of Floyd Copeland.)

Mr. Poth: Well, let's see, what was my original question?

Q. (By Mr. Poth): Do you know whether cargo was being [307] discharged, from your own personal knowledge and observation, whether cargo was being discharged from the P & T Adventurer on the night of July 14-15, 1956, in Seattle, Washington, at Pier 48? A. Yes, it was.

Q. You saw it? A. Yes.

Q. Where was the first place of rest of that cargo? A. On the dock, or in cars.

Q. And was the first place of rest at the end of ship's tackle? A. No.

Q. And who had charge of taking the cargo from the ship's tackle? A. I did.

Q. On the P & T Adventurer?

A. Well, I did to start the ship, and then Mr. Cordray did after he came.

Q. You have been a foreman for fourteen years?

A. Fourteen years.

Q. And have you ever been a foreman on a ship?

A. No,—well, just a very few times.

Q. And you've been a foreman on the pier?

A. Yes.

Q. Now, in relation to discharging operations, do you have [308] occasion to go aboard a ship?

A. Yes.

Q. Why?

A. Well, to coordinate the work between the ship and the dock.

(Testimony of Floyd Copeland.)

Q. What do you mean by "coordinate"?

A. Well, a lot of times the different commodities of gear, or different commodities of cargo, you need different kinds of gear, and I go on there to see what kind of gear I'll need for the next cargo that's to come out, whether it's steel to the dock or steel to a car, or steel to the dock or piped to the dock or to a car, and then I'll know what kind of gear to get to take care of the operation.

Q. Now, on this particular night did you see Jack Cordray—let's strike that. In the morning of the 15th did you see him?

Mr. Howard: Before or after the accident, Counsel?

Mr. Poth: Your Honor, I was going to mention the accident but I was afraid Counsel might object. I'll ask it, then.

Q. (By Mr. Poth): Did you see him after the accident? A. Yes, I did.

Q. How long afterwards? [309]

A. Well, I imagine it wasn't over three or four minutes, I don't believe.

Q. Where was he?

A. Well, he was on the dock at the time I saw him.

Q. What did you first hear about the case? How did it come to your attention?

A. Well, someone called to me and said that——

The Court: No, never mind what they said, just called to you.

(Testimony of Floyd Copeland.)

Q. (By Mr. Poth): Someone called to you. Where were you?

A. I was on the other side of the dock, I believe.

Q. How far away?

A. Oh, maybe 100 to 150 feet.

Q. And when you saw Mr. Cordray what condition did he seem to be in?

A. Well, at the time I saw him he was in a dazed condition and he was complaining of his neck and his head and his chest.

Q. And what did you do with him, if anything?

A. Well, I took him up to the front office and called the hospital and I took him to the hospital.

Q. Now, did you see a block around there that evening?

A. Well, when I came on the dock someone had just thrown it on the dock, and I picked it up. They said, "There's the block that hit Jack, put it inside the dock," and I [310] picked it up and carried it inside the door and put it on the inside of the dock.

Q. Where was it when you saw it?

A. It was on the face of the dock.

Q. You put it where?

A. On the inside of the dock.

Q. Then what did you do?

A. Then I took Jack up to the front office and called the hospital and told them I was bringing him up.

Q. Did you examine the block at the time?

A. No, I didn't. I just looked at the end of it where it had broken off.

(Testimony of Floyd Copeland.)

Q. What did it look like, if you recall?

A. Well, it looked awfully rusted to me.

Mr. Poth: I believe I have no further questions.

The Court: At this point we will take a ten minute recess. The jury may now retire to the jury room.

(Short recess.)

The Court: All are present as before the recess. You may proceed.

Cross Examination

Q. (By Mr. Howard): Mr. Copeland, I understand that you worked as the dock [311] foreman in connection with the cargo from the P & T Adventurer on one or two nights before the accident to Mr. Cordray?

A. I started the ship, yes.

Q. Was there a stevedore foreman working then, do you know? A. On the ship, yes.

Q. And who was that?

A. Mr. Peters and Mr. Olson, I believe.

Q. By whom were they employed?

A. By Seattle Stevedoring Company.

Q. Now, when you were the dock foreman on these previous nights I take it that the Seattle Stevedoring Company was doing the work of discharging the cargo from the vessel.

A. That's right.

Q. And your work as dock foreman started as of the time the cargo was landed on the dock by the Seattle Stevedoring Company? A. Right.

(Testimony of Floyd Copeland.)

Q. So this reference to the first place of rest, I want to clarify that. Actually when the cargo came out of the hold of the ship it was moving over the rail of the ship by use of the cargo-handling gear of the ship until it was landed on the dock apron, is that correct? A. That's right. [312]

Q. Now, it stopped moving at that time, did it not?

A. Until the bull drivers pick it up and bring it to the dock.

Q. It stopped moving at that time, did it not?

A. Yes.

Q. And sling men then disengaged the cargo-handling gear that was used by the stevedoring company? A. Right.

Q. And as of that time the dock operator took over and moved the cargo to what you have described as the first place of rest, is that right?

A. That's right.

Q. Now, Mr. Copeland, you have described where longshoremen are obtained from, the longshore hall. In working on the dock and as a dock foreman are you sometimes engaged or involved in the work of taking cargo from a place where it had been stored on the dock and loading it into railroad cars? A. Sometimes, yes.

Q. In other words, it may have been stored in the dock for a day or a week or a month?

A. Right.

Q. And eventually when the parties are ready

(Testimony of Floyd Copeland.)

they order it loaded into railroad cars or trucks or whatever it may be, is that correct? [313]

A. Yes.

Q. Now, who does that work?

A. Longshoremen.

Q. Yes. Are they described as car loaders?

A. Sometimes, yes.

Q. Yes. Where do those men come from?

A. They all come from the longshore hall.

Q. The same place as the longshoremen come from that are used on the ship or in moving the cargo from the place where it is landed on the dock to the place of rest in the dock?

A. Longshoremen handle all the cargo to and from the vessels.

The Court: To what point? From the vessel to what point or points?

A. Well, sometimes they take the cargo out of boxcars and——

The Court: I am talking about from in discharging, my question concerns discharging. From the ship to what place or places?

A. Well, to the first place of rest on the dock.

The Court: You may proceed.

Q. (By Mr. Howard): After the cargo has laid on the dock, has been stored on the dock for a period of time, the party that owns or controls the cargo is ready to have [314] it moved out by railroad car, who does that work?

A. Longshoremen.

Q. Yes. You have also described the Barge Line,

(Testimony of Floyd Copeland.)

Matson Line, Griffiths and Sprague, American Mail Line and Rothschild International Stevedoring Company as being others that you've been employed by as a dock foreman. A. Right.

Q. And you've mentioned that they do both ship work and dock work, is that correct?

A. They do.

Q. Is it not a fact that sometimes they may be only doing the dock work and not the ship work?

A. Yes, there's companies that do that, yes.

Q. And other times the same companies might be doing only the ship work and not the dock work?

A. That's right.

Q. When you took Mr. Cordray up to the hospital after this accident on the morning of July 15th, how did you get to the hospital?

A. In my car.

Q. He was conscious? A. Yes, he was.

Q. Did he talk with you on the way up?

A. Yes, he did.

Mr. Howard: That's all I have. [315]

Redirect Examination

Q. (By Mr. Poth): Now, when men load cars on the dock, cargo that's on the dock, what name do you have for that? What type of work do you call that?

A. Well, we usually call it car work.

Q. Now, when men on the dock handle cargo moving to or from a ship, what kind of work do you call that?

(Testimony of Floyd Copeland.)

A. Well, it's handling of cargo to or from a ship.

Q. Is there any specific name that you call it?

A. Just general cargo, is all.

The Court: The work classification I think he is talking about.

Q. (By Mr. Poth): Work classification. You just called one car work, then you have cargo going to or from a ship that's being handled. What sort of classification do you call that in waterfront terminology?

A. Well, it's all longshore work, whether it's handled from cars or to cars or the ship, it's all longshore work.

Q. Now, is there any difference——

The Court: At that time when you were there was there any ship crewman participating in this operation which you were the dock foreman of?

A. Not that I know of, no ship's crewman.

Q. (By Mr. Poth): Mr. Howard mentioned to you about ship [316] work and dock work and some companies doing ship work part of the time and some of them doing dock work part of the time. I'll ask you whether or not in that connection does the same company ever do both the ship work and the dock work at the same time in relation to the same vessel? A. Yes, they do.

Q. Now, when cargoes come to this first place of rest on the dock and it's to be taken away by the consignee or for the consignee's benefit by other

(Testimony of Floyd Copeland.)

means than a railway car, what is that other means that's used?

A. Well, teamsters usually come in and pick it up and load it in their trucks and take it away.

Q. They load right from the pile?

A. Right from the pile.

Q. Would that be the pile of cargo that had been made by the longshoremen? A. Yes.

Q. Do the longshoremen load those trucks?

A. No.

Q. Now, in connection with cargo that's on the dock after the ship has been departed — after the ship has departed, and this cargo is piled up in its first place of rest and it later becomes necessary to move that cargo into a railway car, where are the men obtained for that? [317]

A. Longshoremen.

Q. Now, do you know whether or not — you called that car work, didn't you?

A. Yes, that's the term, yes.

Q. Do you know whether or not those men are paid the same rate of pay as when they are handling cargo directly from the ship on the dock?

A. Yes, they are, except the bull drivers.

Q. Pardon?

A. Except the bull drivers. They get a—there's a differential between truckers and bull drivers.

Mr. Poth: Perhaps, your Honor, I'm a little bit behind times.

Q. (By Mr. Poth): Has it always been that way? A. Well,—

(Testimony of Floyd Copeland.)

Q. That ship work and dock work were paid the same?

A. As far as the longshoremen are concerned, yes, but the bull drivers, they have a differential of 10 and 15 cents an hour, I believe. I think it's a little more than 15 cents now since the last contract.

Q. Is that between ship work and dock work?

A. Well, all the bull drivers receive the same amount of pay, whether they are loading cars or working ships, but the longshoremen, they receive the same amount of pay all the time. [318]

The Court: You may give the witness an opportunity with a proper question to find out whether anyone connected with this litigation was a bull driver.

Q. (By Mr. Poth): Was anybody connected with this litigation here a bull driver?

A. On the P & T?

Q. Pardon? A. On the P & T?

The Court: Name the persons in your question. Confine the inquiry to certain specified persons that are concerned here in this case.

Mr. Poth: I believe it's not important to the case, your Honor, and I'll withdraw any further questions and excuse the witness.

The Court: You may do that.

Mr. Poth: I have no further questions, your Honor.

Recross Examination

Q. (By Mr. Howard): Is Mr. Cordray a lift truck or bull driver? A. Pardon?

Q. Is Mr. Cordray a lift truck or bull driver?

(Testimony of Floyd Copeland.)

A. He does, yes.

Q. On this particular occasion of this accident was he [319] serving in that capacity?

A. No, he was serving——

Q. In what capacity was he serving?

A. He was a foreman.

Q. Dock foreman? A. Yes.

Mr. Howard: That's all.

Mr. Poth: Oh, one other question.

Redirect Examination

Q. (By Mr. Poth): Do bull drivers work aboard ship? A. At times, yes.

Q. What do they do aboard the ship?

A. Well, there's a lot of cargo now that is palletized and they stow palletized cargo and they stow heavy lifts of different kinds, and on the discharge a lot of times they use them in the hold on pipe and steel and beams and different packs of different commodities, heavy lift stuff.

Q. Are those the same bull drivers that they use on the dock?

A. No, they are hired by the stevedoring company for the ship, on the ship.

Q. I mean to say, can the same man be working on the dock one day and in the hold of a ship the next? [320] A. Yes.

Mr. Poth: I have no further questions.

Mr. Howard: Nothing further.

The Court: Step down.

(Witness excused.) [321]

* * * * *

Tuesday, November 12, 1957.

1:45 o'clock p.m.

(All parties present as before.)

(The following proceedings were had in the absence of the jury:)

The Court: If either one of you wishes to state anything for the record regarding this offered testimony to prove custom, I would like you to take that opportunity now.

Mr. Poth: Your Honor, I have searched the Washington Digest and the Federal Digest and also the authorities such as Wigmore and the American Institute, the American Law Institute, and I find nowhere is there any requirement that a business custom and practice or usage must be set forth in the pleadings. Starting first with Corpus——

The Court: Did you find an express statement that under a general denial the plaintiff may offer such testimony or, under a general allegation of unseaworthiness or negligence, custom bearing out the standard required or the standard reached is all that is required?

Mr. Poth: I did not, your Honor. Instead I found what seems to be the clearest statement which is set forth in 31 Corpus Juris on Evidence at Paragraph 180 at Page 881. [251]

The Court: Just a minute. 31 Corpus?

Mr. Poth: Yes, Secundum.

The Court: C.J.S., Evidence, Page what?

Mr. Poth: 881, Paragraph 180. That is *Corpus Juris Secundum*, your Honor.

The Court: Yes. Paragraph what?

Mr. Poth: 180.

The Court: You may proceed.

Mr. Poth: And it says there that, "The custom of a party or his employees or the course of conducting his business may become relevant and material in an action involving some claim or liability arising out of such business." Which seems to indicate that it may possibly become relevant during the course of a trial, but no mention is made anywhere that it has to be specifically pled.

The Court: I have not heard you read any mention of a statement yet that it may be introduced without any pleading of it specially or under what pleadings it may be properly introduced. That is what I am after.

Mr. Poth: Well, I have some more here, your Honor. This is from the American Institute, Law Institute of the American Bar Association, Volume 1, *Basic Problems of Evidence*, at Page 182. "Business, custom [252] or habit, that is what is customarily or habitually done in the regular course of business, is highly relevant in tending to show that the custom was followed in a particular instance, and evidence of custom or habit is universally accepted." That is another point.

Then I have the custom of a party—no, excuse me, your Honor. Then I have from *Wigmore* at Page 375—no, Section 375 to 379, in which it is referred to custom or usage, I see, "Course of con-

duct by a community or other body of individuals,” and it makes the same statement, that evidence is admissible.

Then there is the case of U. S. versus Ryno.

The Court: The last name is spelled how?

Mr. Poth: R-y-n-o—no, excuse me, your Honor, that’s not the citation.

The Court: If I could just have the volume and page I could maybe get it if——

Mr. Poth: I don’t have it with me. I also have numerous citations here which show that the Court can take judicial notice of customs and practice which exist in a given situation even where they are not set forth in the pleadings.

The Court: Did you get the statement that the Court is required to do that?

Mr. Poth: It’s a case from this court. “It [253] is common knowledge that logs are towed in waters near Port Angeles, Washington, and that logs or booms are anchored in nearby zones.” That’s Puget Sound Tug & Barge Company versus Olympic Forest Products Company, 21 Federal Supplement 940. And then there is an older one at 139 Federal 89. That’s from this court here.

The Court: The 21 Federal Supplement was what?

Mr. Poth: 21 Federal Supplement 940. There’s also the District Court of Washington, this is a case in 1905, where on libel for seaman’s wages on a coasting vessel libelants were entitled to the highest rates of wages paid at the port of departure for the time of their actual service, and though

there was no direct evidence as to the going rate of wages at that port, intimate commercial relationships existed between the port of departure and the port of destination, the Court would take judicial notice of such relations and in the absence of proof to the contrary would infer that the highest rate of wages at the port of departure——

The Court: We are talking about custom and usage now, I believe.

Mr. Poth: Yes. These cases are all collected under Custom and Usage——

The Court: That Wigmore citation is what? Please give me that. [254]

Mr. Poth: That Wigmore citation is Section 375 to 379.

The Court: Do you have the volume number of Wigmore? Wigmore is in several volumes sometimes.

Mr. Poth: Yes, but I believe on the outside of the volume it runs—the section numbers are given on the outside.

The Court: Section——

Mr. Poth: 375 to 379. The volumes are on the cover of the book, the section numbers.

The Court: You did not find a statement as to whether or not it is necessary to plead anything?

Mr. Poth: No, I did not, your Honor. I found no such statement. I found an indication that it was not. I might say, if I could explain what I'm trying to show here, your Honor, perhaps I could make my position a little clearer, more clear here, your Honor.

the dock, which is the stacking or piling in tiers on the dock, and that is all I'm attempting to show, and I just want to show the physical setup down there as to employment, and I realize we have become involved in custom and usage and things like that which I don't believe are actually material here.

The ordinary case on custom and usage where it might possibly be necessary to plead a custom and usage would be where there's a custom or habit of mailing a letter, for example, in a large office where it is important that something be mailed from some legal standpoint on a certain day and nobody can remember actually mailing that letter because there may be 200 employees in the office, so all they can testify to is the custom and usage, the custom and practice of mailing that letter.

That is a little different than I'm trying to show here. In fact, it's much different. All I'm trying to show is the employment relation on the waterfront, and I want to show it so there will be no confusion.

I believe Counsel is trying to on his side show that between the land and the sea in so far as handling the cargo is concerned there is a large chasm. For example, to quote the Biblical, the rich man who [258] looked up and saw Lazarus in the bosom of Abraham, he wants to make the gulf just that big, but what we attempt to show is that there is often a common employer, that there is no gulf, that it's all part of the maritime service to the ship of handling its cargo and——

The Court: I would like to know what you contend as to what the present state of the proof is as to what the contract here was. Was the stevedoring contract here to not only get the cargo off the ship but also pile it within the warehouse on the dock?

Mr. Poth: There were two stevedoring contracts, or shall we call them longshore contracts. The courts interchangeably use the terms "stevedore" and "longshore," and a longshoreman can be employed on the dock just as well as employed upon a ship. If I might go into stevedore—

The Court: I do not believe I need that. I have heard the two names interchangeably spoken all my life, at least all that part of it on the Seattle waterfront. You need not bother about that. I want to know what the proof in this case shows respecting what the situation was here according to your view of it.

Mr. Poth: The proof in this case made out, especially on the testimony of the witness here whose deposition was read, was that aboard the ship one [259] contractor had the ship work, that is the physical labor of taking the cargo off of the ship to the ship's side. It also shows that, regardless of whether you call this a tariff or a contract, the fact is that this tariff which has been introduced sets rates of pay and schedules for the handling of that cargo to its first place of rest upon the dock, and whether it's called a tariff or called a contract, there actually was a contract, because there was payment made, and I cannot see, your

Honor, how it can be argued that there was no contract when duties were performed and pay was made for it.

The simplest sale, we must all recall, is a contract, and here we had services furnished and paid for according to a prearranged schedule, and whether or not that was done by private negotiation or by a fixed or set tariff, that tariff itself still constituted a contract, and——

The Court: Do you not see very well that if you had pleaded the question that by custom and usage on the Seattle waterfront that the unloading of the vessel encompassed not merely the lifting from the ship and lowering onto the dock but also the further work of stowing it in a pile or in some place agreeably to the owner's facilities, cargo owner's facilities, inside the warehouse, we would not have this argument you have here? [260]

Mr. Poth: Yes, but, your Honor, I alleged in my complaint that he was a longshoreman.

The Court: I have been asking you ever since this question was first raised to point out in the complaint the words by which you tender this allegation which enables you to have the right to offer this evidence as to custom and usage on the Seattle waterfront.

Mr. Poth: Well, I have alleged, your Honor, that he is a longshoreman, and I wish to point out how longshoremen are employed upon the Seattle waterfront. I state in Paragraph IV on Page 2 of my complaint, "That as an independent contractor Olympic Steamship Company hired the plaintiff

as a foreman of longshoremen and entered upon the performance of its said contract, and the plaintiff at all times herein mentioned"—and I said here in Paragraph III, "That Olympic Steamship Company, having complete control and supervision of all operations pertaining to the loading and discharge of cargo from defendant's vessel, P & T Adventurer, in the Port of Seattle in the navigable waters of Puget Sound at Seattle, Washington." And they did have control of all loading and discharge of cargo on the dock.

The Court: The word "pertaining" may have some relationship to what you are trying to offer as practice and usage or custom and usage or whatever you [261] want to call it. I do not know whether it does or not, but it does not specifically say what kind of work it was that you expected to show the foreman was doing under that word "pertaining." Is there anything else that you allege?

Mr. Poth: Yes. I have also alleged that, "Plaintiff while in the course of his employment"—

The Court: Where is that?

Mr. Poth: This is Paragraph VI at Line 16. "—was obliged to traverse the weather-deck of said vessel," and so forth and so on. So I have alleged that he was a longshoreman, I have alleged that his employer was engaged in handling the cargo from the vessel, performing a maritime service, and I believe the cases that I have cited show that it makes no difference whether you're injured aboard the ship or on the dock, if you're injured

by the unseaworthiness of the vessel's gear, tackle or apparel, because whether or not you're employed on the dock or on the ship you are engaged in rendering a maritime service directly to the ship's cargo, and these cases that have been cited such as the Berryhill case, they are easily to be distinguished because in the Berryhill case and other cases of like ilk they were not performing, the plaintiffs or libelants were not performing a maritime service to the vessel such as handling [262] its cargo, and here we have a maritime service to the vessel of handling the cargo to the first place of rest.

The Court: Do you contend and seek to show by the proof in this case that the accident happened while the gear was either removing the cargo from the ship or while the gear was returning to the hold of the vessel for the purpose of removing more cargo from the ship that this line gave way, that this strap gave way, or what is the——

Mr. Poth: No, I do not contend that, your Honor. I——

The Court: What do you contend about the relationship between the place and kind of work of the plaintiff at the moment the accident happened and the discharging of cargo work of the ship?

Mr. Poth: I contend that he was aboard the vessel in the course of his duties to seek information as to this cargo, what to do next, to coordinate, like was testified to in this deposition, to coordinate the work between the ship and the dock of handling the cargo, and whether or not cargo was being

handled at this particular moment made no difference, any more difference than if a longshoreman in the hold was struck by a falling block or a falling beam caused by the unseaworthiness of the vessel and the winches happened to be not [263] working at that time.

In other words, they are covered all of the time while they are in the course of their employment with this warranty of seaworthiness. The only test is, are they performing the duties of a longshoreman, and that is the only test, your Honor, and are they in the course of their employment while they are performing those duties, and it makes no difference whether that work is on the ship or on the dock.

The only question in this case, if there is any question at all, is whether or not Mr. Cordray came aboard that vessel in the performance of his duties, because his duties were those of a longshoreman. If he came aboard for some private venture of his own, then he is not covered, of course, and if he was not in the course of his employment.

Assume that the work was over, the ship had been shut down, the men had been discharged, and he came aboard on a personal visit to see the mate or someone like that and the time for cessation of work had ended. But here the time has not as yet ended. He was still on the payroll. If he came aboard off of the payroll on his own time, then of course there would be no coverage.

The Court: Now you have used twenty-five minutes. [264]

Mr. Poth: I'm sorry, Your Honor.

The Court: I will hear the answering side. I will hear the defendant.

Mr. Howard: May it please the Court, going to Your Honor's question asked to Counsel before lunch as to authorities as to the necessity for pleading custom or usage, I would like to cite to Your Honor American Jurisprudence, Volume 55, under the heading Usage and Custom, Section 46, the heading of the section being Necessity for Pleading.

The Court: Now wait just a minute. The section of that is under what, Pleading, or what? Is this under the subject of Pleading in——

Mr. Howard: No, Your Honor, the subject is Usages and Customs.

The Court: It is not under Pleading or connected with evidence or pleading at all, is that right?

Mr. Howard: It is under Usages and Customs, Section 46, entitled Necessity for Pleading. This is at Page 308.

The Court: All right.

Mr. Howard: I'll read a quote from that section. "It is the generally accepted rule that a custom or usage general in character may be [265] proved without special allegation and may be given in evidence under the general denial. On the other hand, a custom which is not so general in its character that it would be presumed to have been known to the parties or of which a court will take judicial knowledge must be pleaded to warrant the acceptance of evidence of such custom."

I would like to read to the same effect the *Corpus Juris*. It's in 25 *Corpus Juris Secundum* under the subject Customs and Usages, Section 32 entitled Pleading, Subheading A, Necessity. This is at Page 123.

The Court: Page what?

Mr. Howard: Page 123.

The Court: You may proceed.

Mr. Howard: "General customs or usages of which the court will take judicial notice need not be pleaded, but particular customs or usages relating to a particular locality or trade and not judicially noticed by the court must be pleaded."

I would like to quote from a couple of cases to the same effect. *Cudahy Packing Company versus Narzisenfeld* in the Second Circuit, the citation is 3 Federal 2nd 567.

The Court: 3 what?

Mr. Howard: 3 Federal 2nd 567, and I'm [266] reading from Page 572. "Whenever a local usage or custom is relied upon to take a case out of a general rule of law, it has been held that the custom should be specially pleaded and cannot be shown under the general issue or general denial."

Similarly in the Third Circuit a case, *Central Railroad versus Schick*, appearing in 38 Federal 2nd 968, I'm reading at Page 971: "The offer of the defendants to present testimony of custom was properly rejected. The defendants did not plead usage or custom, and therefore such evidence could not be received."

And the Washington courts are to the same effect. I can give Your Honor a Washington case if you are interested in that.

The Court: The reason the Court spoke of it is because I thought when I was practicing as a lawyer before the courts of this community that especially in a defense pleading, and I thought the same was true in a plaintiff's pleading, custom had to be pleaded if it would vary in any way the normal contract relations or to in any way relate to the duties of employment or anything of that sort. I wish to see Mr. Howard through.

Mr. Howard: Now just a minute or so more, Your Honor. On the pleadings, I have checked them during the noon recess and I find nothing in [267] the complaint or in the pretrial order that could be considered as any pleading or any raising of an issue of a custom or usage. Mr. Poth has stated here this afternoon that he wants to prove what he says, that it is often that longshoremen have a common employer. I submit to Your Honor that what may have happened often in other cases is of no importance in view of the nature and quality of the testimony which we have coming in here which definitely indicates that we have separate operations and separate employment, namely, the Seattle Stevedore Company doing all of the work of loading or discharging cargo from the vessel to the place where it is landed on the dock, and then the testimony is clear even at this moment that there is another contractor, another terminal operator, namely, the Olympic Steamship Company, takes

over at that point and moves the cargo from the place where it is landed on the dock into the warehouse.

We therefore submit, and its a very important part of our position, that the man who was working for the dock operator when aboard the vessel was not performing the work of a longshoreman, he was performing the work of a dock operator, and namely a dock foreman.

As a matter of fact, in the pretrial order which was settled in this case, after considerable discussion as to the extent and the admissions that [268] were to be made, we finally ended up in Paragraph VI with a vey definite statement that, "In pursuance of its aforesaid handling of the said ship's cargo, Olympic Steamship Company employed the plaintiff, Jack V. Cordray, as a foreman over other shoreside workmen, employed by it handling said cargo on its said Pier 48."

Now, if the pretrial order is to mean anything, Your Honor, I submit that it is an admission by the parties right now that Mr. Cordray was a dock foreman employed by the terminal operator to handle the cargo after it had been removed from the ship and landed on the dock by another independent contractor, the stevedoring company, and then the terminal operator took over.

But in view of the authorities which we cite here, to get back to the point that was actually raised by Your Honor before the noon recess, I don't think there is any question but what the courts have uniformly held that a custom or usage must be pleaded

unless it is so general that the Court can itself take judicial notice of it.

The Court: Is there anything further you want to say?

Mr. Poth: Yes, Your Honor. I wish to say that Counsel and I evidently violently disagree as to the actual physical nature of this work. I don't [269] think this case should be resolved upon a confusion of terms.

The actual physical fact of the conduct of this work is that getting the cargo to the ship's side is only one-half of the longshore work, and whether or not one-half is done by one company and one-half is done by another company or whether the whole is done by one company is unimportant. The only thing that is of importance is whether or not there was actual handling of ship's cargo, and I think that this is a confusion of the situation which is unwarranted under the facts, and I think that the cases which I have cited are quite clear that a longshoreman on the dock, even if he is employed on the dock, is just as much a longshoreman and just as much entitled to a vessel's warranty when he is injured as if he is employed all the time aboard the ship.

I say this is an unwarranted confusion of terms and an unwarranted confusion of the facts, and I think it takes us away from the true issues of the case and is a stratagem that I don't believe should be considered by the Court.

The Court: I do not believe that the Court has before it anything other than to decide on this ob-

jection made to the offering of proof of custom here, and I have tried to give to Counsel the difficulty the [270] Court was having and they have not helped me a bit.

Mr. Poth: I think I can, Your Honor.

The Court: The objection is sustained.

Mr. Poth: Well, I would like to inquire of Your Honor as to whether or not, owing to the fact that I have alleged that he is a longshoreman and he was doing a longshoreman's work, whether I can inquire as to the employment practices of longshoremen in respect to the various companies and various vessels on the Seattle waterfront, which I am sure is not any different than any other part in these United States, and the Court can surely take judicial notice of it, and if Your Honor pleases, I can cite here the cases that show where judicial notice can be taken, and Counsel mentioned that he was citing—that he could cite a Washington case. I would like to have Counsel cite the Washington case and tell us what it says.

Mr. Howard: I will give that citation now, Your Honor.

The Court: All right.

Mr. Howard: Redmon versus Andrews, 147 Washington 390, the quotation from Page 393: "No such custom was pleaded, and therefore evidence to sustain it was inadmissible."

Mr. Poth: What were the—may I inquire [271] through the Court what the facts of the case were?

Mr. Howard: I can't give a summary of the

facts, Your Honor. I was working pretty fast in getting these citations.

The Court: The simple inquiry, if it turns out to be an inquiry, if Mr. Poth will meticulously confine any questions that he may ask of any longshoreman witness, you have already passed this with all of them except the plaintiff and this witness now on the stand. If the plain and simple question is asked of a longshoreman who was working here at this time as a member of one of these crews as to what kind of work he was doing, then it would be permissible in my opinion to ask him whether that was a usual or an unusual duty for him as a longshoreman to perform, but you certainly cannot go into any matter of proving a custom or a practice which was not pleaded.

Mr. Poth: Your Honor, I would like to ask this witness how he obtains his longshoremen, how they are obtained.

The Court: That has not been before the Court. Is there any objection to that?

Mr. Howard: Well,—

The Court: In other words, you seek to show that it is obtained through such and such labor sources? [272]

Mr. Poth: Yes, and then I want to show where they are sent and for whom they are sent.

Mr. Howard: Well, I would like to reserve my objections until I hear the questions, Your Honor.

The Court: Very well. You may bring in the jury.

Mr. Howard: Your Honor, I have a doctor waiting to testify. May we call this doctor out of order?

The Court: Yes, indeed. Bring in the jury.

(The following proceedings were had within the presence of the jury:)

The Court: May the record show that each and all of the jurors have returned to their places as before, and also that all parties on trial with their Counsel are present?

Mr. Poth: That's agreeable, Your Honor.

Mr. Howard: That's agreeable.

The Court: You may——

Mr. Howard: I would like to call Dr. Miller, Your Honor.

The Court: You may do that. The defendant is calling a witness as a part of the defendant's case in chief out of order, the plaintiff's case in chief being interrupted for that purpose to accommodate a witness. [273]

DR. JAMES WALTER MILLER

called as a witness in behalf of defendant, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Howard): Will you state your full name and address, please?

A. James Walter Miller. My address is 2845 West Viewmont Way, Seattle.

Q. And what is your occupation or profession?

A. I'm a physician and surgeon.

(Testimony of Dr. James Walter Miller.)

Q. And at what locality do you practice this profession?

A. I practice this specialty in Seattle at the Mason Clinic.

Q. How long have you been associated with the Mason Clinic, Doctor? A. Over twelve years.

Q. Will you state briefly what your education was for this professional work?

A. I'm a graduate of the University of Michigan Medical School in 1939. I interned at University Hospital in Ann Arbor, Michigan, from 1939 to 1940. I was an assistant resident in surgery at the same institution from 1940 to '41. I was an instructor in the University of Michigan Medical School in orthopedic surgery until 1945, when I came to Seattle. I'm an instructor in the Medical School here. I'm a diplomat of the American [274] Board of Orthopedic Surgery.

Q. And are you a member of any professional societies or organizations? A. I am.

Q. What are those?

A. I'm a member of the King County Medical Society, the American Medical Association, the American College of Surgeons, the American Academy of Orthopedic Surgeons, the Western Orthopedic Association, the North Pacific Orthopedic Association.

Q. Is your practice at the present time confined to any particular work?

A. My work is confined to the spine and the extremities. Orthopedics, in other words.

(Testimony of Dr. James Walter Miller.)

Q. Now, Doctor, did you at my request have an occasion to examine the plaintiff in this case, Mr.

Jack V. Cordray? A. I did.

Q. And when was that examination conducted?

A. On March 6, 1957.

Q. And have you seen Mr. Cordray on more than that one occasion? A. I have not.

Q. Where was the examination conducted?

A. The examination was conducted in my offices in the Mason Clinic. [275]

Q. Did you take a history from Mr. Cordray at that time? A. I did.

Q. Will you state what history you obtained?

A. I obtained the history that while he was working on July 15, 1956, he was struck in his right frontal area, that's in his forehead on the right side, by a block and strap. He told me that he was somewhat dazed but he was never unconscious. Two workmen prevented him from falling. He told me that he was taken to the Swedish Hospital where he came under the care of Dr. Darrell Leavitt. He was hospitalized there for two days. While there he was treated with ice bags on his head. He then returned as an outpatient and was seen by Dr. Cary and he was later seen by Dr. Leavitt. He also mentioned that he was referred to Dr. Bayless, who saw him on August 7th of 1956. He mentioned that he saw Dr. Leavitt in mid-August, that was the last he saw him, then he transferred his care to Dr. Bernard Gray, who hospitalized him on or about the 20th of August of

(Testimony of Dr. James Walter Miller.)

1956 in the Providence Hospital. He was there for twenty days. While there he was given physiotherapy in the form of heat and massage and traction upon his neck. He remained under Dr. Gray's care and at the time I saw him was receiving physiotherapy under his direction.

He told me that he returned to work [276] shortly after he was injured and he continued at his regular job as a fork lift operator. He stated that as a result of the injury he had a six weeks time loss and he claimed additional lost work as a result of the injury.

The week prior to my examination, that's prior to March 6, 1957, he told me that he had worked 26 or 27 hours. The week previous he said he had worked 31 hours.

He told me that his chief problem was residual pain and stiffness in his neck and headaches. He admitted that he was about 90 per cent improved over what he was at the time of his return to work the previous July. He——

Q. Did he describe to you any complaints that he had at the time of your examination in March of 1957?

A. He did complain of some pain in his lower back but stated that was minimal. He also mentioned that he had a cramping sensation involving the entire right side of his body. He also said that the headaches were pretty well confined to the back of his head and behind his ear in the mastoid region.

(Testimony of Dr. James Walter Miller.)

Q. When you obtained this history from Mr. Cordray in March of 1957 did Mr. Cordray describe to you or relate to you any previous accident resulting in any injury to his back? [277]

A. He did. He stated that Dr. Darrell Leavitt in 1950 had performed a disc operation. He stated that he had had mild residual difficulty with his lower back following this operation.

Q. What would you understand in laymen's language to be meant by a disc operation?

A. That's the removal of one of the cushions in the lower back. There are shock absorbers down there, and when they stick out too far we remove the offending portion.

Q. Did you make a physical examination of Mr. Cordray on that occasion? A. I did.

Q. Will you state what your findings were on that physical examination?

A. Examination on that date showed a man who appeared at a stated age. Examination of his neck showed very jerky movements on attempted motion, both when I asked him to move his neck and when I moved it. The patient was very resistant to all motions, particularly so when I rotated his chin to the right side. There was tenderness throughout the entire cervical spine, that's the neck area in behind, and he was also tender on each side of the cervical spine and also between his shoulder blades and the dorsal region. He was also tender throughout his entire lower back. [278]

Examination of the lower back, further examin-

(Testimony of Dr. James Walter Miller.)

ation of the lower back showed again the same jerky movements as were noted up in the neck. Here again there was some loss of forward flexion, about 30 percent. Other movements of his lower back were essentially full.

There was tenderness throughout the entire lower back, as I mentioned before, and he literally danced around, even when I made light pressure here or in his neck.

Q. Did you take measurements of the upper extremities, the right and left arms? A. I did.

Q. What is the purpose of taking those measurements?

A. That's to say if there's any wasting as a result of the injury or other cause.

Q. And what would wasting or a shrinking indicate to you as a physician?

A. Wasting or shrinkage would ordinarily indicate that something was wrong.

Q. What did you find on your measurements of the upper extremities?

A. On examination of his upper extremities the measurements showed that they were equal. In other words, there was no wasting or atrophy. [279]

Q. Now, did you also conduct certain neurological tests? A. I did.

Q. And what type of tests were those?

A. We test the reflexes, that's the reaction which you're all probably familiar with, when you tap certain portions of the body a jerk occurs involuntarily, and it shows whether the nerves are

(Testimony of Dr. James Walter Miller.)

intact to the brain and return and the reflexes which I tested and motor function——

Q. Well, were the reflexes—what was your finding on the reflexes?

A. The reflexes were normal, as well as motor function was normal, and also sensation to pin prick was entirely normal.

Q. What were you looking for on the motor power and sensation? What would an abnormal finding indicate as to those tests?

A. An abnormal finding would indicate evidence of nerve damage.

Q. Did you test the motion of the shoulder, the elbow or the wrists of Mr. Cordray?

A. I did.

Q. And what were your findings?

A. I found the shoulder, elbow, wrist and finger motion entirely normal.

Q. Now, Doctor, did you make any measurements of the lower [280] extremities, the legs of Mr. Cordray? A. I did.

Q. What was your finding?

A. They were of equal length and by the same token, as noted in his upper extremities, there was no evidence of wasting. Measurements of the thighs and the calf area showed them to be equal.

Q. Now, did you make any neurological checks of the lower extremities? A. I did.

Q. What type?

A. Here again I did the reflex examination, and

(Testimony of Dr. James Walter Miller.)

I found on the right side that there was an absence of his right Achilles jerk, showing——

Q. What did that indicate to you as an orthopedic physician?

A. That indicated that he had had previous disc trouble, as his history substantiated, and that was a residual of his nerve damage from his previous disc difficulty that he had had taken care of some years before.

Q. Did you undertake to conduct any other tests with respect to the legs? A. I did.

Q. Of what type?

A. I tested his sensation and I found there was —on the right side, that there was a scattered sensory loss that [281] was not confined to any one nerve distribution.

Q. What did that indicate to you, Doctor?

A. That indicated no serious nerve deficit. In other words, this didn't fit any particular pattern, this loss. We have—the sensory areas are well mapped out in the body.

Q. Did you make any other test or examination in that respect? A. I did.

Q. What was its nature?

A. I went through the usual leg tests that we carry out in the examination of people with back trouble, and I found that with simple flexion of his thigh on the body, that's just bringing the leg up, that the patient was very resistant, he would hardly let me do it, there were all kinds of jerky

(Testimony of Dr. James Walter Miller.)

movements and so on, and I could hardly examine the man, frankly.

Q. Going back to the absence of the right Achilles jerk and his scattered sensory losses, will you state whether or not from the medical and clinical standpoint those could be related to any injury in the neck area, the cervical area?

A. No, they wouldn't fit the pattern of a neck injury.

Q. Did you take any X-rays during the course of the examination of Mr. Cordray in March?

A. X-rays were taken under my direction. [282]

Q. And what findings did you make in those X-rays?

A. X-rays were taken of his neck and his lumbar spine, and they were interpreted by the radiologist and by myself as being entirely normal. There was no evidence of recent or old bony disease.

Q. Was there any evidence in those X-rays of loss of the cervical curve or the normal curve in the cervical area?

A. We felt that the curve was essentially normal.

Q. Was there any evidence of any injury in the level of the C-2 vertebra, the second cervical vertebra?

A. No, there was no evidence of any abnormality there.

Q. Now, Doctor, going back to the jerky movements which you described in connection with your examination of both the upper and the lower back

(Testimony of Dr. James Walter Miller.)

of Mr. Cordray on March 6th, will you state whether or not those are consistent with any evidence of a particular disease or an injury?

A. No, they are not characteristic of any disease or injury.

Q. What do they indicate to you as a medical examiner?

A. Well, they indicate that the patient is voluntarily not cooperating with the examination, or the examiner.

Q. As the result of your examination on March 6th of Mr. Cordray did you form an opinion, Doctor, as to whether or not there is any disability remaining from the accident which he reported having occurred [283] in July of 1956?

A. From my examination and going over Mr. Cordray's X-rays we found no evidence whatsoever of any abnormality other than to what I've testified, the residual nerve damage following his previous back trouble.

Q. As the result of that examination did you form any opinion as to whether or not Mr. Cordray was then in March of 1957 in a physical condition that would enable him to perform the regular work of a longshoreman?

A. Yes, I felt that he could continue at his regular job, and I felt also that he was not in need of further treatment.

Mr. Howard: That's all the questions I have, Your Honor.

The Court: You may inquire.

(Testimony of Dr. James Walter Miller.)

Cross Examination

Q. (By Mr. Poth): Doctor, I believe you mentioned that you found tenderness in his neck; is that right? A. Yes, that is true.

Q. And to what did you attribute this tenderness?

A. Well, tenderness is subjective and it's—I could find no reason why his neck was tender.

Q. Did you find any numbness in his right hand? [284]

A. No, I didn't find any numbness in his right hand.

Q. In the little finger and the one next to it?

A. No, I didn't find any numbness there.

Q. Do you have these neck cases in the course of your practice, Doctor? A. Yes, I do.

Q. And what do you do for them?

A. I treat them, as Mr. Cordray has been treated.

Q. Well, just exactly what is your treatment, Doctor? What do you do?

A. Heat, rest and traction.

Q. By "traction" do you put them in the hospital?

A. Occasionally. Often traction is administered under the direction of a physiotherapist.

Q. What is traction, Doctor?

A. That's pulling the neck with weights or other means.

Q. And how do you get rid of the tenderness?

(Testimony of Dr. James Walter Miller.)

A. The tenderness usually goes away with heat, rest, traction and time.

Q. Do you have ones in which the tenderness doesn't go away?

A. Not in this type of injury, no.

Q. Well, in any type of neck injury where there hasn't been a fracture, where there's been a severe strain of the neck?

A. Most of those recover. [285]

Q. What about the ones that don't recover?

A. There are not many that don't, as a matter of fact.

Q. Do all your patients recover, Doctor, when they have severe neck strains?

A. I think with time they do, yes.

Q. Well, since you've been practicing do you have any patients that haven't recovered yet from severe neck strains? A. Not that I recall.

Q. Every one of your patients has recovered from severe neck strains with no residual tenderness or pain? A. With time, yes.

Q. That is, every one that you have treated has recovered? A. As far as I know.

Q. What do you mean by as far as you know? Do you know or don't you?

A. Oh, I think I do. I mean it's not only my opinion, but most of these neck strains get better.

Q. I'm asking you, Doctor, about your own personal experience, not your own personal opinion. Do you know or do you not know whether all your patients have recovered from their neck strains?

(Testimony of Dr. James Walter Miller.)

A. I think I've testified that most all of them do.

Q. Well, let's talk about the ones that don't. I didn't ask about most all, I asked about whether all of them [286] have.

A. I again answer your question by saying that most of them do, and those that don't seem to get along.

Q. What happens, Doctor, to the ones that are not included in that category of most?

Mr. Howard: I don't believe the witness finished his answer to the last question.

The Court: Will you finish your answer, Doctor, if you have not already done so?

A. I again would like to simply say that most all of them recover more or less completely, and if they don't they are able to carry on gainfully, and I believe Mr. Cordray is doing that.

Q. (By Mr. Poth): You realize, Doctor, that "most" is a relative term. I'm asking you again, Doctor, what happened to those patients that are not included in that term "most" that you've just used?

A. I don't believe I can fairly answer that question.

Q. Did you examine Mr. Cordray for the purpose of treating him or for testifying here at this trial?

A. For testifying, if necessary, at this trial.

Q. Just for the purpose of testifying. How many times did you see him?

(Testimony of Dr. James Walter Miller.)

A. I saw him on one occasion only.

Q. And how much time did you devote to him?

A. Oh, I'd say at least an hour.

Q. About an hour? A. Yes.

Q. And were you there that whole hour or were there nurses coming and going?

A. Oh, there might have been some interruption. I wouldn't know.

Q. How many other patients did you see during that hour when you saw him?

A. Probably not very many, as a matter of fact.

Q. Not very many. Well, how many?

A. I can't answer that.

Q. Well, you had him there for an hour and you say you saw other patients. Now, during that hour you say you don't know how many. Well, did you see twenty patients besides him during that hour?

A. Mr. Poth, I didn't testify that I saw any other patients during that hour.

Q. I believe you said you——

A. I said I couldn't recall.

Q. I believe you said you didn't see very many.

A. I might have been interrupted. I cannot remember. I'm interrupted continually.

Q. Do you wish to say now that you didn't see any other than him? [288]

A. I wish to simply say that I might have been interrupted during his examination. I frequently am, with various calls from patients and so on. I do not recall whether I was interrupted or not.

(Testimony of Dr. James Walter Miller.)

Q. Now, Doctor, you examine all of the plaintiffs that oppose Mr. Howard's office, do you not?

A. No, I do not.

Q. Do you mean that Mr. Howard uses other doctors besides you?

A. Well, I'm sure he does. I've actually never been in court before with Mr. Howard, for your information.

Q. He has sent you a lot of cases for examination, hasn't he, Doctor?

A. I've seen several from his office, yes.

Q. How long have you been making examinations for Mr. Howard?

A. Oh, I would say for a year intermittently.

Q. For the last year, and how many patients have you examined for him in the last year?

A. I would say not more than six or eight.

Q. Have those other cases come to court yet?

A. I believe that some of them have been settled out of court.

Q. Are you expecting to go to court for their office on other cases in the future?

A. I expect to serve Mr. Howard or anyone else in the usual [289] fashion.

Q. Do you make examinations for other offices?

A. Yes, and for plaintiffs, too.

Q. Is it to whoever calls you first?

A. That's certainly not true, Mr. Poth.

Q. What are the mechanics of a neck strain?

A. The mechanics of a neck strain are simply

(Testimony of Dr. James Walter Miller.)

the neck goes through a greater range of motion than normal.

Q. Well, why does it go through a greater range of motion than—the normal, you say? Normal what?

A. Than it ordinarily would. The same as when you turn your ankle, it is forced through a greater range than normal. The same is true of a neck strain.

Q. What trouble, if any, does that cause?

A. That produces a stretching of muscles and ligaments and produces some pain.

Q. Does the neck have any joints in it?

A. Yes, of course it does.

Q. How many joints does the neck have?

A. Oh, it has eight in front and sixteen behind. It has twenty-four.

Q. Twenty-four joints? A. Yes.

Q. How many joints are there in an ankle?

A. Oh, that's one joint. [290]

Q. Now, what holds these twenty-four joints together in the neck?

A. Muscles and ligaments.

Q. And what happens to these muscles and ligaments when there's a sprain?

A. They are stretched.

Q. And what damage, if any, does that do?

A. Oh, they respond, of course, with pain, but ordinarily in time they will heal.

Q. Does the neck remain weak after it's been sprained like an ankle?

(Testimony of Dr. James Walter Miller.)

A. Well, as a matter of fact it doesn't.

Q. It gets stronger?

A. It usually gets better. It's more apt to get better than the ankle, as a matter of fact.

Q. In other words, then, you're better off if you have a neck that's not too good, if you can get it sprained, why it will be better than it was before, is that right, Doctor?

A. Oh, I don't think that's true. The answer to that is no.

Q. Now, in the normal person are both arms always of the same measurements?

A. Sometimes in the right—for example in a right-handed individual the right arm, the right forearm will be slightly larger than its mate, and the same will be true [291] in a left-handed individual, the arm that's used most, the major arm, if you will, will be slightly larger, sometimes about a quarter of an inch.

Q. The right arm, if a man is right-handed, his right arm is generally larger than the left?

A. Yes, a minimal amount, maybe, not always.

Q. Now, I believe you testified that Mr. Cordray's arms were exactly equal; is that right?

A. That is true.

Q. Now, did you determine whether he was right-handed or left-handed?

A. I don't believe I made a note of that, so I do not know.

Q. Did you find out how much he weighed?

A. No, we didn't weigh him.

(Testimony of Dr. James Walter Miller.)

Q. Did you find out what color his eyes were?

A. I didn't make any note of that, no.

Q. You didn't check his eyes?

A. No, I didn't.

Q. Now, where there's been a blow on the head and symptoms of headaches, don't you generally check the eyes?

A. I didn't check his eyes, no. I don't include that in my neurological.

Q. Well, isn't that a common practice in a neurological examination, to check the eyes?

A. Yes, that's commonly done. [292]

Q. For reaction to light, and——

A. Yes, that is commonly done.

Q. And check the pupils, and so forth, but you didn't do that. Did you check his heart?

A. No, I didn't.

Q. Did you check his blood pressure?

A. No, I didn't.

Q. Did you use a stethoscope?

A. No, I didn't.

Q. Well, what did you do besides X-ray him?

A. Well, I performed on this man as I've already testified. I specialize in the spine and the extremities, and I performed the usual examination that we carry out to evaluate this type of disorder in injured people. I did not give him a general medical examination. He was not sent to me for that purpose, nor did I think he needed one, as a matter of fact.

Q. You didn't think he needed an examination?

(Testimony of Dr. James Walter Miller.)

A. A general examination. If I had thought so, I would have had an internist examine him.

Q. So besides putting your hands on him and looking at him what did you do, Doctor?

A. Well, as I've testified, I had this man stand in front of me disrobed and I examined his neck for its motion, I examined his back and I examined his extremities in [293] the usual fashion as I've testified. I did not use any special equipment, but that is ordinarily not necessary for my type of examination.

Q. You mean the type of examination you make for Mr. Howard?

A. That's certainly not true.

Q. Well, now, when you had him take his clothes off and you had him stand there and you looked at his neck, what did you do, just look at it?

A. Well, I had him bend his head forward and I had him bend his head and neck backward and rotate it to one side and to the other, bend to one side and the other. I percussed his neck. I felt of his muscles, I performed the usual and customary neck examination.

Mr. Poth: I believe I have no other questions.

The Court: Any further questions?

Redirect Examination

Q. (By Mr. Howard): In making that examination, Doctor, did you check the neck for all movements in all directions and ranges?

A. I did.

(Testimony of Dr. James Walter Miller.)

Q. And similarly with the upper and lower extremities? A. I did.

Mr. Howard: No other questions. [294]

Recross Examination

Q. (By Mr. Poth): Oh, can you tell how a man's neck feels by looking at it with your naked eye?

A. No, you can't tell how it feels by just looking at it.

Mr. Poth: I have no further questions.

Mr. Howard: That's all I have, your Honor. May the witness be excused?

The Court: Any objection?

Mr. Poth: No objection, your Honor.

The Court: This witness is excused.

(Witness excused.)

JACK V. CORDRAY

the plaintiff, called as a witness on his own behalf, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Poth): Will you state your name, please? A. Jack V. Cordray.

Q. And you are the plaintiff in this cause?

A. Yes, sir.

Q. Where do you live, sir?

A. 4202 Sunnyside, Seattle.

Q. And what is your occupation?

A. Longshoreman.

Q. And how old are you? When were you born?

(Testimony of Jack V. Cordray.)

A. I was born the 4th of May, 1920.

Q. And are you married? A. Yes.

Q. And how long have you been married?

A. Since 1941.

Q. Do you have any children?

A. I have two children alive and two dead.

Q. What is your—what are your types of duties as a longshoreman in so far as you're personally concerned?

A. My duties as a longshoreman?

Q. Yes. [322]

A. Most of my duties are driving bull on the dock and in the hold of ships.

Q. And how long have you been a bull driver?

A. Since—I believe it was the end of 1950 after my back operation.

Q. You mentioned a back operation. How did you hurt your back at that time?

A. Well, I had injured it on the dock down at Alaska Steam.

Q. What happened?

A. Well, it was just a simple case. There was a flatcar parked between Pier 42 north and 42 south. On that flatcar there was some kind of a tractor or cat. It had blocks under each end of it nailed to the car to keep the thing when the car was in movement, I guess, so it wouldn't fall off. I took a crowbar and I was taking a swipe at one of those blocks to knock it out of there, which we were supposed to do. I missed the block, and that was just the extent of it.

(Testimony of Jack V. Cordray.)

Q. And what happened then?

A. They took me to the hospital.

Q. And how long were you in the hospital?

A. Well, excuse me just a minute and I can tell you exactly. (Witness refers to paper.) I was hurt April the 11th, 1949, and I was in the hospital on the 11th and I was out April the 20th. [323]

Q. And how many days was that?

A. From April the 11th, 1949, to April 20th, 1949.

Q. Roughly nine days? A. Yes, sir.

Q. Were you operated on at that time?

A. No.

Q. When were you operated on?

A. I wasn't operated on until sometime—I can't give you the exact date, but it was in March of 1950.

Q. That was approximately a year later?

A. Approximately.

Q. And what treatment, if any, did you have during that year?

A. After I had my back operation?

Q. No, before you had the back operation.

A. Well, I was hurt April the 11th. April the 20th I was out. They put me back in May the 1st. I was out May the 9th. I went back to work May 16th, 1949.

Q. And did you work that year?

A. I tried to, yes.

Q. And did you work fairly steadily before you were operated on?

(Testimony of Jack V. Cordray.)

A. Before I was operated on, yes. Not after I was hurt, not between April the 11th, no, sir. My wife had to tie my shoes so I could go to work. I couldn't bend over. [324]

Mr. Howard: I move to strike the last part of the answer as not responsive.

The Court: It is stricken and the jury will disregard it.

The Witness: I'm sorry, sir.

Q. (By Mr. Poth): But you did try to work?

A. Yes.

Q. Then after you were operated on how long were you off?

A. I was operated on, like I say—I believe it was either the end of February or the first of March. I was off April, May, June and July.

The Court: Of what year?

A. Of 1950.

Q. (By Mr. Poth): And this was all in the low back? A. Yes, sir.

Q. When did you return to work, you say, approximately what date?

A. Well, it was in July. I would say approximately the middle of July of 1950.

Q. And did you work fairly steadily after that?

A. Yes, I did.

Q. What were you doing? What job did you have on the 14th and 15th of July, 1956?

A. On the 14th I was sent down from Pier 28 to help Mr. Copeland down at Pier 48. I had finished a ship at 28 [325] early and they sent me

(Testimony of Jack V. Cordray.)

down to help Mr. Copeland at 48 on another ship.

Q. And who was your employer?

A. Olympic Steamship.

Q. And what ship were you working in connection with? A. P & T Adventurer.

Q. And what were your duties there that night?

A. My duties were to see that the cargo was moving from the ship to the dock or from the dock to the ship, see that the cars were under the gear so the gear wouldn't be hanging at any time.

Q. Now, aside from cargo that went into cars, what sort of work was being performed there by you?

A. Well, we had cargo coming from some hatches, general cargo to the dock, some cargo was going in cars.

Q. All right. But now the general cargo that was coming off the ship, particularly in relation to the number two hatch of the ship, cargo that wasn't destined to go into a railway car, what did you do in connection with that cargo?

A. We had the bull drivers bring that in the dock and stockpile it.

Q. Would you explain how you stockpile it?

A. Well, as they bring loads off the ship you try to get the ship foreman to get the men in the hold to build the loads [326] level so when they are brought on the dock you can stack one load on top of the other so it doesn't take up so much space on the dock.

Q. And how are these loads stacked one on top of the other on the dock?

(Testimony of Jack V. Cordray.)

A. With the bull driver.

Q. And how high can they stack these loads?

A. Some of those loads you can go as high as thirty feet high.

Q. The bull will put them up that high?

A. I would say that, some bulls. Some machines are higher than others.

Q. Now, on this particular night where did the bulls get these loads that were piled up in the dock?

A. From the hook's gear, the ship's gear on the dock.

Q. And how did it get to the ship's gear?

A. It was sent out with the ship's rigging.

The Court: Where, if you know, did the longshoremen quit working with it?

A. I beg your pardon, sir?

The Court: With respect to that which was put inside the dock in piles which you just last described, when, at what point in that work did the longshoremen cease working with it?

A. Well, after we piled it on the dock on the [327] day shift you still have longshoremen come that take it down and sort it on the dock.

The Court: You may inquire.

Q. (By Mr. Poth): Now, did you have occasion to go aboard the defendant's vessel, the P & T Adventurer, on the morning of the 15th of July, 1956?

A. I'd been on the ship during the night of the 14th and the morning of the 15th.

Q. What were your occasions for going aboard?

(Testimony of Jack V. Cordray.)

A. The first time we went aboard the ship I went aboard the ship with the dock supervisor. His name is Mr. Wallace. There was cargo coming out of number four hold or number five, I'm not positive which one, and there were cars—it was stuff going into cars, gondolas. The stuff that was supposed to come out first was in such a position, I guess, that they couldn't get it out first, so the supercargo asked Mr. Wallace and I to come up and look down the hatch and see why they had to have a different car under the dock—under the hook. We had to go up there because we had to shift these other cars to get in the car that was supposed to be for that certain cargo.

Q. Then did you have occasion to go aboard after that?

A. Well, if I'm not mistaken we had went up, Mr. Wallace and I had went up twice with the supercargo. The supercargo had told me before midnight that some of these [328] gangs were going to work till after five o'clock in the morning.

Q. All right. Now, is it a custom and practice to go aboard ships on the part of dock foremen?

A. All the jobs that I've been on I've seen it, it has been a practice.

* * * * *

Q. (By Mr. Poth): What is the necessity, if any, of a dock foreman going aboard in regard to discharging operations of a ship?

A. Well, there's quite a few of them. Some of them, you go up there, you're bringing out differ-

(Testimony of Jack V. Cordray.)

ent kind of cargo. You want to find out what they are going to bring out next so that you can have the gear ready on the dock. If they are bringing out general cargo on boards, you have boards under the hook. Maybe they'll say, "In a little while maybe you're going to get tires." If they bring out tires they do not bring them out on boards, you have to have a different kind of equipment for your bull driver [329] to haul the tires away, and you get your information there.

Q. What other examples?

A. Well, I've had to go up there and ask the foreman, like that night when I went up I asked him, I said, "Is this gang going to go home or are they moving to another hatch?" Mr. Peters says, "Somebody, I don't know who, has changed their mind."

Q. What time did you go aboard?

A. The last time?

Q. The last time.

A. Well, it was approximately a quarter to five.

Q. I didn't quite catch that.

A. Approximately a quarter to five.

Q. And what was your purpose in going aboard?

A. The reason I went up, I went up on the gangplank, I seen Mr. Peters standing by number two. I went up to ask Mr. Peters if this gang was going to go home or shift to another hatch, and I had to have that information so I could let the drivers on the dock go or keep them.

Q. Now, as far as that gang aboard the ship

(Testimony of Jack V. Cordray.)

was concerned, if you had let your bull drivers go without consulting Mr. Peters would the ship gangs have been able to continue work? A. No.

Q. Why?

A. Because you have to have the drivers to give them the cargo or the dunnage or whatever they need.

Q. Well, now, where did you go when you went aboard ship about a quarter to five?

A. Right to number two hatch.

Q. And who did you see there?

A. Mr. Peters.

Q. And what did you say to him, if anything?

A. I asked Mr. Peters what they were going to do with that gang, whether they were going to send them home or move them to another hatch.

The Court: This is about three times. Do not ask him a question that calls for that answer again. I think we have heard that twice or three times now.

Mr. Poth: All right. Thank you, your Honor.

Q. (By Mr. Poth): And then what happened, if anything?

A. After I finished talking to Mr. Peters I turned around and I started to walk. Somebody hollered. The next thing I knew I was hit.

Q. Then what did you do and what happened to you, if anything?

A. Well, some stevedore, I don't remember which one it was, walked me off the gangplank and put me out on the dock. Somebody else called for

(Testimony of Jack V. Cordray.)

Mr. Copeland and Mr. Copeland [331] took me in the office to take me to the hospital.

Q. And did you go to the hospital? A. Yes.

Q. And how long did you stay in the hospital?

A. I went in the 15th and came out the 17th.

Q. How did you feel before you went to the hospital there that night after you had been hit?

A. Well, I was pretty rumdum. I really didn't remember too much. My chest was bothering me, the back of my neck was bothering me and my right front forehead was bothering me.

Q. And how did you feel when you were in the hospital?

A. Well, they had given me shots and ice packs. I still had the headaches when I was laying in the hospital.

Q. Then how did you feel when you got out?

A. I went home right after I was out of the hospital. The doctor told me to go home and rest. I went home, I laid down in bed, I felt terrible and my wife called the doctor.

Q. And then how long did you continue to feel terrible? A. Right up till today.

Q. Well, then did you go back to the hospital again?

A. I went back to the hospital, yes, August the 28th.

Q. And what did they do for you at that time, if anything?

A. They kept me in the hospital. They gave me shots, [332] tractions, and I believe every day

(Testimony of Jack V. Cordray.)

they took me downstairs to this physical therapy for heat treatments, massage and neck stretching.

Q. And how long were you in the hospital that second time?

A. I went in Providence Hospital August the 28th, came out September the 15th.

Q. And when did you go back to work?

A. Excuse me, I'll give you the exact date on that, too. (Witness refers to notebook.) I worked July the 24th and July the 28th.

Mr. Howard: I beg your pardon, that last date?

A. In July I worked July the 24th and July the 28th.

Q. (By Mr. Poth): Then after you got out of the hospital when did you go back to work?

A. Out of the hospital, excuse me. August, September,—October 22nd.

Q. Now, how did you feel when you went back to work?

A. Well, I didn't feel too good. The doctor had relieved some of the pain in my neck, I mean he gave me a little more motion, but I still had the pain in the right side of my neck and I was still getting these terrific headaches.

Q. Well, why did you go back to work if you were in that condition? [333]

A. Well, I'm sorry, sir, but I have a wife and two children that I have to feed. My wife can't work.

Q. Now, what treatment, if any, did you have after you got out of the hospital the second time?

(Testimony of Jack V. Cordray.)

A. The second time?

Q. Yes.

A. Well, I took physical therapy treatments at the Providence Hospital from September till January the 1st.

Q. And what did those physiotherapy treatments consist of? What did they do when they treated you?

A. I had the same treatments I had in the hospital. They gave me some kind of electrical treatments, neck massage and tractions.

Q. And then what did you do?

A. After——

Q. In the way of treatment.

A. Well, I had a few treatments at the doctor's office. I explained to the doctor that I had to work a little bit, so he had me buy a traction that I could set up at home that my wife could work for me.

Mr. Poth: Mark this for identification, just this one.

The Clerk: Plaintiff's Exhibit No. 5.

(A neck traction device was marked Plaintiff's Exhibit No. 5 for identification.) [334]

Mr. Poth: I might say, your Honor, that we will wish to present an order to withdraw these two exhibits at the earliest possible time.

Q. (By Mr. Poth): Now showing you what has been marked for identification as Plaintiff's Exhibit 5, I'll ask you to tell us what it is.

A. It's a neck traction.

Q. And how often do you use that?

(Testimony of Jack V. Cordray.)

A. Approximately every other day, sometimes more.

Mr. Poth: I wish to offer that in evidence at this time, your Honor.

Mr. Howard: No objection.

The Court: Admitted.

(Plaintiff's Exhibit No. 5 for identification was admitted in evidence.)

Q. (By Mr. Poth): Will you state whether or not that has been washed recently?

A. Yes, my wife washed it Sunday.

Q. Now I wonder if you could place it on for us and show us how it fits.

A. It's pretty hard to get on by yourself.

Q. Just place the canvas part on yourself in the position that you use it.

(Witness does as requested.)

A. The strap on the other side comes over here and hooks. [335] I can't hook it by myself.

Q. All right. Then what fastens on the top? Now you can take the mask off. Now hold up the other part.

(Witness does as requested.)

Q. All right. Now, that cord on there, how do you use that? How is that used?

A. Well, when we first put it up we had a pulley up, but the pulley wouldn't hold it. Now we throw it over the door, I get 'way up on my——

Q. What do you throw over the door?

A. The cord, excuse me.

Q. All right.

(Testimony of Jack V. Cordray.)

A. I throw the cord over the door and I get 'way up on my tiptoes as high as I can get, my wife stands in the back and holds against this with all of her weight and I go down real slow as far as I can. We do that six, seven, eight, ten times.

The Court: What do you call the entire thing after you have it assembled on your body in the manner you have just described?

A. I believe it's called a traction, your Honor. I'm not sure.

The Court: Traction gear, do you believe that is what you would call it?

A. I believe so, sir. [336]

Q. (By Mr. Poth): And why do you use that as frequently as you do?

A. Because I have to work and it does help to relieve the pressure and the headaches at the back of my neck.

The Clerk: Plaintiff's Exhibit No. 6.

(A neck brace was marked Plaintiff's Exhibit No. 6 for identification.)

Q. (By Mr. Poth): Showing you what has been marked as Plaintiff's Exhibit No. 6, I'll ask you to tell us what that is.

A. It's my neck brace.

Q. And how did you happen to get that?

A. Because it helps to relieve the pain in the back of my neck when I put this on, which I wear to work sometimes, sometimes when I drive, to keep my neck from falling forward. It helps so I don't have too much pain in the back of my neck.

(Testimony of Jack V. Cordray.)

Q. Now would you put that on for us?

(Witness does as requested.)

Q. All right, that's fine. You may remove it now. Who prescribed that for you?

A. Dr. Gray.

Q. And how long have you had it?

A. (Referring to notebook) August the 21st.

Q. Do you remember how much that cost you, Plaintiff's [337] Exhibit 6? A. This?

Q. Yes. A. No, sir, I don't.

Q. Do you remember how much the traction gear cost you?

A. No. My wife bought them. I really don't remember.

Q. Now, since you've been back to work how have you been getting along? That is, as far as pain and trouble with your neck is concerned, if any.

A. I have pain continuously in the right side of my neck. If I work steady on these rough docks and the rough holds of the ships I get these tremendous headaches and stiff necks. On many jobs I've had to quit because I can't stand it, and I'm not putting in today the hours I should be putting in.

Q. Now, how many hours did you work in 1955, the year before the injury? A. In 1955?

Q. Yes.

A. (Referring to paper) 1,881 and three-quarters.

Q. How many hours did you work in 1956?

(Testimony of Jack V. Cordray.)

Mr. Howard: May the record show that the witness is referring now and has been referring previously as to dates to some records that he carries in his pocket?

The Witness: This is from the employers. I'm [338] trying to tell the truth and that's the best I can do. In 1956 my longshore hours were 1,299 and three-quarter hours.

Q. (By Mr. Poth): And bossing hours?

A. 260 and one-quarter hours.

Q. And this year what are your total hours?

A. Up till the end of November——

Q. No,——

A. Or, excuse me, up till the end of October, 1957, I have 1,220 and one-quarter hours and 94 and three-quarter hours. About 1,314 hours or 1,315 hours, right up till the end of October, my last payday.

Q. How much did you make in 1955 altogether?

A. \$5,445.38.

Q. How much did you make in 1956?

A. My earnings in 1956 were \$5,160.06.

Q. How much have you made so far in 1957?

A. '57?

Q. Yes.

A. My longshore earnings are \$4,471.41.

Q. Your bossing earnings? A. \$401.27.

Q. In the year 1956 and in '57 here—excuse me, strike that. How are you employed? In which way are you selected for this longshore work? Are

(Testimony of Jack V. Cordray.)

you personally [339] selected or is it by a rotation system? A. A rotation system.

Q. What have been the job opportunities in the years 1956 and '57 in relation to job opportunities in preceding years?

A. Well, in 1956 according to the employers and everybody else was the biggest year they ever had on the Seattle waterfront.

Q. Are you acquainted with a Paul Anderson?

A. Yes, sir.

Q. And how do you know him?

A. He and I worked together on just about every job.

Q. Is he likewise a bull driver?

A. Yes, sir.

Q. And does he work as a foreman from time to time?

A. He's had a few jobs like myself, yes, sir.

Q. And do you know what he made in 1956?

A. Seven thousand eight hundred and some dollars, almost seventy-nine hundred.

Q. And did he have any other earnings besides that? A. No, sir.

Q. And do you know what he has made so far this year?

A. I talked to him Sunday. He's home with the flu right now and I talked to him Sunday and he has over seventy-three hundred made right up to date. [340]

Mr. Howard: Seventy-three hundred and eight?

(Testimony of Jack V. Cordray.)

A. I say up—no, I mean a little over seventy-three hundred.

Mr. Howard: Thank you.

Q. (By Mr. Poth): Made to date?

A. Yes. That was up till last Sunday when I talked to him.

Q. Where is he now?

A. He's home in bed with the flu.

Q. Have there been any raises in pay over the years? A. Yes, sir.

Q. And has that gone along with inflation?

A. Yes, it has.

Q. Generally how has inflation affected the income since 1950 of the average waterfront worker?

A. Since 1950?

Q. Yes. A. In 1951 I made \$5,887.67.

Mr. Howard: Excuse me. I would like to get these figures down, Mr. Cordray. A. Yes, sir.

Mr. Howard: If you would read it again I'll try and copy them. A. \$5,887.67.

Mr. Howard: Thank you.

Q. (By Mr. Poth): And what has been the inflationary increase [341] in wages, if any?

A. I can't tell you exactly. The wages are 'way up. If I'd have put in the hours in 1956 that I put in in 1955 I would be well over seventy-five hundred for 1956. [342]

* * * * *

Q. (By Mr. Poth): What percentage increase in the hourly rate of pay has there been since 1950, if you know? A. Since 1950?

(Testimony of Jack V. Cordray.)

Q. Yes.

A. Well, now, I'm not real sure on that, but I would say somewheres in the vicinity of fifty cents, sixty cents, an hour. Maybe more, maybe less, I can't say exactly.

Q. You would say roughly fifty cents an hour increase?

A. Yes, I would say roughly fifty cents an hour.

Q. Now, in 1956 did you earn a vacation?

A. I would not have if it hadn't have been for the foreman.

Q. Now, how do you feel right now? What's bothering you right now?

A. I'll tell you the truth. The way I feel right this minute I wish I could lay down.

Q. Yes, but I mean tell us what——

A. I'm sick right now. I have these continuous pains. Sitting in these chairs for two hours just don't work. I'm sorry. I have these continuous pains in the right side of my neck.

Q. What about your arm, if anything?

A. These two fingers, I have had this—it's been coming [343] down from the pinching in my back, it's came in and affected these two fingers. They feel like they're asleep.

Q. Do you have any pain in your arm?

A. No tremendous pain. It's just when this thing catches in my neck it sends some kind of a shot down there. That's the only way I can explain it, and it puts these fingers to sleep.

(Testimony of Jack V. Cordray.)

Q. Have you been free of pain in your neck since this injury? A. No, sir.

Q. What were you able to do for recreation, if anything, which you haven't been able to do since this accident?

A. Well, in 1953 up until 1956 I have managed Little League baseball and Little League football. This year I could not do it. I've lost out. I have put in some time with Little League, yes, but I cannot actually show these kids, and that is my biggest recreation, is for these kids from eight to eleven years old. That's my main hobbies.

Q. Did you used to get in and pitch ball with them? A. Yes, sir.

Q. Have you been able to do that since the injury? A. No, sir.

Q. Were you able to show them how to take out an end or [344] take out a tackle before?

A. I couldn't even take football this year. I got my certificate, and that's as far as it went. I go down and watch the kids. I can tell them something, but I cannot get down and show them.

Q. Were you able to demonstrate blocks and tackles to them before you got this neck injury?

A. Yes, sir.

Q. Well, how do you get along with your work?

A. I don't get along too good with my work at all.

Q. What trouble do you have?

A. I can't work steady. The doctor explained that to myself and to my wife. If I work six, seven

(Testimony of Jack V. Cordray.)

days in a row I'm hurting nobody but myself, but I have done it because I've had to. I've had certain bills come in. I'll work six, seven or eight days, then I'm off three or four days, five days. I can't stand that continuous jar on these machines on the dock or in the hold of the ship.

Q. When you're working do you experience pain? A. Yes.

Q. And what sort of pain do you experience?

A. Well, on my job when I'm driving these machines, what you call fork trucks, you have your loads in front of you. You can't drive forward, you have to turn around in the machine and drive backwards or else you'll run [345] over everybody on the dock. After I get around so far I have to turn my whole body to get around. Lots of times I can take that just so long. I'll quit and I'll have to go home and get somebody else to take my job and I'll go home.

Q. Has your neck and head been getting any better lately?

A. I've had better motion in my neck, but it's not any better as far as the actual pain is concerned when I overdo it.

Mr. Poth: I believe I have no further questions at this time.

The Court: You may inquire.

Cross Examination

Q. (By Mr. Howard): Mr. Cordray, you used the terms "lift truck" and "lift truck driver" and

(Testimony of Jack V. Cordray.)

“bull” and “bull truck” or “bull truck driver”. Is there any difference between the two?

A. No, sir.

Q. They are the same? A. Yes.

Q. You have referred to the supercargo in your testimony. Who was the supercargo, do you know?

A. I know his name now. At the time all I knew him by was Jumbo. I understand his name is Allinson. [346]

Q. Who was he employed by, do you know?

A. Honestly, I don't know who employs the supercargoes. I don't know who does that.

Q. What activity did he engage in in connection with the loading and discharging of cargo?

A. When you first go to work you ask the supercargo what hatches you're going to work, and that's about it, and you place your men accordingly. At the end of the day when the shift is over he will sometimes tell you who the gangs are coming back, and he signs the logs.

Q. Had you worked on this ship any previous day before this accident?

A. The P & T Adventurer?

Q. Yes.

A. I started that job the night of the 13th sometime before midnight. I can't give you the exact time.

Q. And that was working in what capacity?

A. As foreman with Mr. Copeland.

Q. Dock foreman? A. Yes.

Q. Who was doing the stevedoring work at that

(Testimony of Jack V. Cordray.)

time? A. Seattle Stevedoring.

Q. Now, Mr. Cordray, did you have any responsibility whatsoever in so far as your job as foreman was concerned in the physical operation of taking the cargo out of [347] the hold of the ship and landing it on the dock?

A. You mean by telling the stevedores in the hold how to do it?

Q. Yes. A. No.

Q. Did you have any responsibility in connection with the rigging, trimming or operation of the cargo-handling gear being used by the stevedores or longshoremen aboard the ship? A. No.

Q. Incidentally, is there any difference in your thinking between the word "stevedore" and the term "longshoreman"?

A. No, a longshoreman is a longshoreman.

Q. Is it the same?

A. Yes, sir, it's the same thing.

Q. The same as a stevedore?

A. It's all the same. You're considered longshoremen.

Q. All the same, did you have anything to do with the direction, or working as foreman did you have anything to do in connection with the winging in or swinging in of the booms of the ship when they completed their operations? A. No, sir.

Q. Who did all that work?

A. The stevedore—well, the longshore gang.

Q. Employed by whom? [348]

A. Seattle Stevedore.

(Testimony of Jack V. Cordray.)

Q. And you were employed by whom?

A. Olympic Steamship.

Q. Do you take orders from the dock supervisor?
A. Sometimes.

Q. As a matter of fact, he is the senior representative of the Olympic Steamship Company on the terminal during the night, is he not?

A. The dock supervisor has all the cars, the places on the dock marked out for cargo. He tells me what cars to put under what hatch.

Q. That was Mr. Wallace?
A. Yes.

Q. Did he give you any orders or directions on this particular night?

A. As far as the car work, yes.

Q. So you were working under his supervision?

A. Not necessarily, no. We were working together.

Q. How long were you aboard the ship before this accident occurred in terms of minutes or hours or——

A. It couldn't have been much over two or three minutes.

Q. Are you familiar with the office that's maintained on the dock?
A. Yes. [349]

Q. Who uses that office?

A. The dock foreman, checkers, sometimes the supercargoes.

Q. Sometimes the stevedore foremen?

A. Yes.

Q. What do they use it for?

(Testimony of Jack V. Cordray.)

A. Well, sometimes they go up there to make out their time.

Q. Some kind of a meeting place, is it?

A. I guess you could call it that.

Q. Now, Mr. Cordray, who was it that first treated you when you went to the hospital after this accident on the morning of July 15th?

A. Dr. Darrell Leavitt.

Q. And is that the same doctor that had treated you at the time of your 1949 accident and your operation in 1950? A. Yes, sir.

Q. Was he then your personal physician?

A. No, sir.

Q. Did you call him yourself? A. Yes, sir.

Q. You selected who was to be called?

A. There is a list of doctors that you have to call if you are hurt aboard the ship, and I know his name is on that list, I've read it many times, and that was the reason I went to him, because you have to go to one of those insurance doctors when your name is on that ship, or on the list. [350]

Q. You selected the doctor, didn't you?

A. Pardon?

Q. You selected the doctor, didn't you?

A. Yes, sir.

Q. Now, Mr. Cordray, you described an operation that was performed on your lower back in 1950 by Dr. Leavitt. A. Yes, sir.

Q. After the accident at Alaska Steam in 1949. I'll ask you whether or not you had any disability

(Testimony of Jack V. Cordray.)

or any trouble after you recovered from that operation?

A. I did have a disability from the State.

Q. Did that operation affect your ability to perform work as a longshoreman after 1950.

A. No, I don't believe so. Very slightly, if any.

Q. You don't believe it did?

A. I haven't missed very much work on account of my back because I transferred jobs and went on to be a bull driver or a lift driver.

Q. Now, I want to be sure that we understand each other, Mr. Cordray. I'm referring to the period from 1950 up to the time of your accident on the P & T Adventurer in 1956, and I'll ask you again, do you believe that that operation in 1950 after the accident in 1949 affected your ability to perform work as a longshoreman? [351]

A. Slightly, I say. In 1951 was the highest wages I've ever had, and that was a year after my operation.

Q. Did your back give you any trouble after that operation?

A. I've had minor trouble, yes, sir.

Q. Did it continue up to 1956?

A. Well, I get pains once in a while in the small of my back, yes.

Q. As a matter of fact, that's the reason you started working as a lift truck driver instead of doing a longshoreman's work, was it not?

A. Because I couldn't do heavy lifting.

Q. That's right. That's the reason you did it, is it not?

A. Part of it, yes.

(Testimony of Jack V. Cordray.)

Q. As the result of the 1949 accident?

A. Uh-huh.

Q. And as of the time of your accident in July of 1956 your principal work was that of a fork lift truck operator or a bull truck operator?

A. Yes, sir.

Q. And occasionally as a foreman?

A. Yes, sir.

Q. Extra foreman? A. Yes.

Q. And since this accident in 1956 and when you have been able to return to work your work has been primarily that [352] of a lift truck driver and an extra foreman? A. Yes, sir.

Q. Have you tried to go back to work as a longshoreman?

A. What do you mean, as a longshoreman? A longshoreman and a lift driver, it's all the same thing.

Q. Well, some longshoremen are assigned regularly to work as a lift truck driver, are they not?

A. Yes.

Q. And you are one of them, are you not?

A. Yes.

Q. Now, what I'm asking you, Mr. Cordray, is, did you go back to the regular work of a longshoreman?

A. I tried it a couple of times, if that's what you mean.

Q. You were unable to do it? A. Yes, sir.

Q. And you were unable to do that work before your accident of 1956, isn't that true?

(Testimony of Jack V. Cordray.)

A. After my—after 1956?

Q. After your operation in 1950 and before your accident in 1956 you were unable to do the work of a regular longshoreman?

A. I did have a few jobs in the hold of a ship.

Q. But mostly you were working as a lift truck driver?

A. Yes, sir.

Q. Now, Mr. Cordray, your earnings in 1951, which was the [353] year following your operation on your low back, were \$5,887.67?

A. Yes, sir.

Q. Do you know how many hours you worked in 1951?

A. 1,902.

Q. 1,902 hours. Now, what were your earnings in 1952, Mr. Cordray?

A. In 1952 my earnings were \$5,204.45.

Q. And how many hours?

A. 1,676 and three quarters.

Q. You worked 225 hours less in 1952 than you did in 1951?

A. Approximately, yes.

Q. And incidentally, these earnings that you're giving us are all for work as a longshoreman, lift truck driver or an extra foreman?

A. Yes, sir.

Q. Your total income for work as what you—

A. Back in 1950, sir, up until '55 I had no foreman jobs.

Q. I see. Now, how about 1953. how much did you earn?

A. \$5,733.97.

Q. And how many hours?

A. 1,684.

Q. And how about 1954?

A. \$5,115.38.

Q. And how many hours? [354]

A. 1,615.

(Testimony of Jack V. Cordray.)

Q. So in 1952 and 1953 and 1954 you were working in the 1,600 hour range, isn't that correct?

A. Yes, sir.

Q. And you were earning between \$5,115 and \$5,733?

A. Yes, sir.

Q. In 1955 your earnings again were how much?

A. In '55, sir?

Q. Yes. A. \$5,845.38.

Q. And how many hours?

A. 1,881 and three-quarters.

Q. And in 1956 again? This was the year of the accident.

A. My hours were 1,560 hours.

Q. 1,560? A. Yes, sir.

Q. And your total earnings?

A. My earnings for '56 were \$5,160.06.

Q. \$5,160?

A. Yes, sir. That's not counting the vacation check.

Q. And how much was your vacation time?

A. Well, in that year we had — I collected \$284.40, and I had collected \$48.83 as back pay.

Q. For back pay? A. Yes, sir. [355]

Q. That was all received by you in 1956?

A. Yes, sir.

Q. Reported as income in 1956?

A. Yes, sir.

Q. For income tax purposes?

A. Yes, sir.

Q. That would make a total in 1956 of \$5,492, is that right?

A. I've got here \$5,493.

(Testimony of Jack V. Cordray.)

Q. I may be off a dollar. I didn't take the odd dollars. You just gave me the——

A. Yes, sir.

Q. You didn't give me the cents.

A. Excuse me.

Q. Now, in 1957 to date again how much have you earned up to the end of October?

A. In '57?

Q. In 1957.

A. Counting — my longshore earnings are \$4,-471.41.

Q. Do you have some other earnings besides that? A. \$401.27 as foreman.

Q. 441.27? A. 401.

Q. I beg your pardon. Yes? A. That's it.

Q. That makes a total of \$4,872.68? [356]

A. Yes, sir.

Q. \$4,872.68 for nine months of 1957?

A. Right up to date.

Q. That would make an average of \$541 and some odd cents per month?

A. Approximately.

Q. Have you figured out, incidentally, how much you earned per month over the five years before 1956, that would be 1951 through 1955?

A. No, sir. There's been too much trouble in there. I wouldn't even attempt to figure it.

Q. Have you figured out how much your average per month was in any one of those years?

A. I have never figured out my monthly salary.

(Testimony of Jack V. Cordray.)

Q. Or what it would average over that period of years? A. No.

Q. This neck brace that you have demonstrated to us this afternoon, do you wear that at all when you're working? A. The collar?

Q. Yes. A. Sometimes.

Q. Sometimes? A. Yes.

Q. On what kind of work are you able to wear the neck brace?

A. When I'm driving. [357]

Q. When you're driving a lift truck or a bull?

A. Yes, and on some foreman jobs I can wear it.

Q. Do you ever check with the supercargo or the stevedore foreman on the dock to see about coordinating your activities?

A. Well, that wasn't what I was told when I started to work.

Q. I didn't ask you that, Mr. Cordray.

A. No.

Q. I asked you if you ever did it. A. No.

Q. When did you last work as a lift truck operator before this trial?

A. November the 5th I worked a half a night.

Q. And when did you last work as a dock foreman?

A. (Referring to notebook) October the 18th.

Q. If your hours of work through the end of September of 1957 total 1,315, I believe you have testified that your hours of work——

A. In 1957?

Q. Yes. A. Yes.

(Testimony of Jack V. Cordray.)

Q. 1,315. Then if you worked the same average number of hours for October, November and December, the last three months of 1957, is it not a fact that you would have a total of approximately 1,578 hours? [358]

A. My hours right now are up till the end of October. All I have is November and maybe one or one and a half weeks in December. Our pay stops sometime in——

Q. I misstated myself. If your hours through October are 1,315, then by applying that same average for the last two months of the year, November and December, is it not a fact that you would have a total of 1,578 hours?

A. I cannot answer that question because right now there is no work on the waterfront. It is very, very slim.

Q. In other words, right now there's a lot of men that are looking for work, isn't that true?

A. Some of them. You get out on your rotation turn.

Q. So that things are not so good on the waterfront right now?

A. They have been, yes, up till now.

Q. But not right now?

A. I should have had my vacation hours in last July.

Q. Did I understand you to say that things were very slim on the waterfront now?

A. This month, November.

(Testimony of Jack V. Cordray.)

Q. And they are usually pretty slim in December, too, aren't they?

A. Not last year, no, sir.

Q. How many hours did you work last December?

A. (Referring to notebook) December of '56, [359] that is before—just a minute. I worked 40½ one week, 51½, and 10, 20, 21, 28, and 29 hours. Most of those are foreman hours, last December. That ended December 23rd when our payroll stops.

Q. Is that all the time you worked in December?

A. Yes, sir.

Q. That's about 121 hours?

A. Last December there was a lot of work.

Q. I beg your pardon?

A. December of last year there was a lot of work.

Q. That's about 30 hours a week in a four-week month, is it not, Mr. Cordray?

A. These figures that I gave you are three weeks.

Q. You didn't work any the last week?

A. Our new payroll started on December 24th.

Q. That's why I asked you if that's all the money you earned in December. A. Of '56.

Mr. Howard: That's all the questions I have.

The Court: Anything further?

Mr. Poth: Yes, I have some questions, your Honor.

The Court: You may inquire. [360]

(Testimony of Jack V. Cordray.)

Redirect Examination

Q. (By Mr. Poth): Now, Mr. Cordray, you've been on the waterfront you say since 1939, is that right? A. Yes, sir.

* * * * *

Q. (By Mr. Poth): What did your father do?

A. He was a longshoreman.

Q. And how long was he a longshoreman?

A. Well, he's retired now, and it was a good forty years before he retired. [361]

* * * * *

(Witness excused.) [362]

* * * * *

The Court: Plaintiff's Exhibit 6 is admitted.

* * * * *

Mr. Poth: Yes, your Honor, for the record I wish to state that as of now plaintiff rests.

The Court: You may now proceed.

Mr. Howard: At the close of plaintiff's evidence defendant hereby moves, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, for dismissal of plaintiff's action on the ground that upon the [364] facts of record and upon the law applicable to said action plaintiff has shown no right to relief against the defendant Pope & Talbot, Inc.

Defendant additionally moves——

The Court: I wish to say to Counsel on both sides that I have read your briefs on this subject very carefully. I have noted the cases you have cited and tried to compare those cases as to facts

disclosed in your brief, as to each one of them, with the evidence as I have heard it in this case with respect to the nature of the employment about which this plaintiff has testified and other witnesses have testified the plaintiff was concerned in and working at the time of the accident. In view of such light as the Court has of the kind mentioned you may now proceed, Mr. Howard.

Mr. Howard: The defendant additionally moves at the close of plaintiff's evidence for a directed verdict against the plaintiff and in favor of the defendant upon the following specific grounds:

1. That all such evidence fails to show that plaintiff is entitled to relief from defendant on the ground of unseaworthiness.

2. That all such evidence fails to show that plaintiff is entitled to relief against defendant on the ground of negligence or negligent failure to [365] perform any duty owing from defendant to plaintiff.

3. That all such evidence fails to show any unseaworthiness of the vessel or negligence of the defendant on the basis of which plaintiff would be entitled to recover against defendant.

The defendant additionally moves at this time to withdraw from the consideration of the jury all issues as to the unseaworthiness of the vessel on the ground and for the reason that it is defendant's position that plaintiff has not shown that he is within the class of workers entitled to a warranty of seaworthiness from a shipowner.

Now, if the Court please, I will speak very briefly

about these motions because I do feel that they are very important to the defendant's case.

As to plaintiff's cause of action, he has amended it to insert both a cause of action based on negligence and one on unseaworthiness.

The Court: I notice that he has amended Paragraph No. VII of the original complaint. I do not see any corresponding amendment or proposal for amendment as to Paragraph No. VIII of the original complaint, and I ask you, is that a deficiency or not from the standpoint of either side.

Mr. Howard: So far as defendant's Counsel [366] know there has been no corresponding amendment of Paragraph VIII of the complaint.

The Court: I call that to the attention of Counsel on both sides for whatever consideration they may wish to give it. You may proceed.

Mr. Howard: Defendant submits that the doctrine of unseaworthiness does not extend to a dock foreman such as the plaintiff in this case. All of the evidence without exception and without contradiction in plaintiff's case is to the effect that the plaintiff had nothing whatsoever to do with the operation of discharging cargo from this ship to this dock. Further, that the plaintiff had nothing whatsoever to do with the supervision of longshoremen working on the ship. Also that the plaintiff had nothing whatsoever to do with the operation of winging in the ship's booms, which was the operation being performed at the time of the accident.

The evidence clearly shows on plaintiff's case that the plaintiff was aboard the ship for one pur-

pose, and that purpose was connected with his responsibilities on the dock, not on the ship, and that was the purpose of his visit aboard the ship. [367]

* * * * *

The Court: Mr. Howard, do you contend that there is no evidence up to this time before the Court and jury which tends to establish what appears to be the plaintiff's asserted allegation and contention that [370] the unloading of this cargo had not been completed until the work of the crew of longshoremen foremanned by the plaintiff had been performed and that plaintiff was injured at a time when he was acting as such foreman of a crew, although working on the dock, were doing so in that part of the unloading operations which was the completing part and still a part of the unloading of the cargo? Do you contend that there is no evidence sustaining that position?

Mr. Howard: We recognize, your Honor, that that is plaintiff's contention. We take the position that the discharging of the cargo terminated when that cargo was raised out of the hold of the vessel by the ship's gear and landed on the dock by the stevedores employed by the Seattle Stevedore Company, and that the termination occurred at that point. Thereafter the work was not strictly and truly longshoremen's work, it was dock work, and that under the *Sieracki* case the Supreme Court was talking in terms of men, longshoremen, working as longshoremen aboard a vessel, not on a dock.

The Court: Do you contend that there is no evidence, not any evidence to support the plain-

tiff's contention that the plaintiff was working in that part of the unloading work which was yet to be completed and in connection with which plaintiff and his crew of [371] longshoremen were doing the completing work? Do you contend there is no evidence to support that contention?

Mr. Howard: We admit that the evidence of the plaintiff is that the dock workers were going to move this cargo from the place that it was landed on the dock into the warehouse. We do not admit or we do not recognize that there is any issue as to that because it is our contention that the discharging operation from the vessel terminated when the cargo was landed on the dock.

The Court: In that connection do you argue or do you contend that this Court must find as a matter of law that on the evidence in the case up to now it was a part of the shipping contract to put this cargo at the places where plaintiff and his crew were engaged in putting it at the time of the accident and that that obligation on this carrier was a part of the carriage contract? Do you make any contention like that?

Mr. Howard: We have made no contention to that effect, your Honor. However, we don't deny that it is part of the obligation of the steamship company as carrier to not only raise the cargo out of the hold and land it on the dock, but also to place it in the warehouse.

The Court: Where these men foremanned by [372] the plaintiff were putting it or engaged in putting it at the time of the accident?

Mr. Howard: That's right, yes, your Honor.

The Court: I believe that will have to determine the Court's ruling upon this motion. [373]

* * * * *

The Court: On the question of negligence the Court is of the opinion and finds at this stage of the evidence that there is evidence which, if believed by the jury, would support a jury finding that the work being done by the plaintiff and his crew of workmen was a part of the cargo unloading operations of this vessel at the time and place in question, and that the relationship of plaintiff to that work was longshoreman's work and as such if a name or a status indicating relationship or non-relationship with the crew of the vessel was that of a seaman, according to the Supreme Court's view in the Sieracki case, no less than a regularly articulated member of the ship's navigating crew.

That being the case, the rule of comparative negligence applies in this case, and even though the plaintiff as well as the defendant may be thought or found by the jury to have been negligent, the Court is not prepared now to hold that plaintiff's action for negligence would thereby be defeated or that anything [387] more as a result would come from such a state of plaintiff's negligence than a reduction of a portion of plaintiff's recoverable damages. As to that I will hear Counsel further, and I now invite Counsel further to discuss it at the close of all the evidence in chief along with any other questions that Counsel on either

side may then wish to repeat or may with propriety renew.

The Court, on the issue of whether this plaintiff may maintain this action before this jury on the evidence up to now relating to unseaworthiness, rules that the plaintiff may do so, and the motion to withdraw the case from the jury and to dismiss the action in respect to the cause of action for unseaworthiness is denied.

The Court further denies a similar motion respecting the cause of action for negligence.

Mr. Howard: May exceptions be noted on the record to your Honor's rulings?

The Court: That will be done. The exceptions in so far as they are objections are overruled, but the exceptions will be noted. [388]

* * * * *

The Court: The plaintiff having rested plaintiff's case in chief and the defendant having made certain motions which have been presented to the Court and have been ruled upon by the Court with like effect as if each and all said motions were presented to the Court at this time, the defendant may now proceed with the defendant's case in chief.

Mr. Howard: Call Mr. Allinson. [389]

FRED G. ALLINSON

called as a witness in behalf of defendant, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Howard): Will you state your full

(Testimony of Fred G. Allinson.)

name and your address, sir?

A. Fred G. Allinson, 6415 Beacon Avenue.

Q. Will you spell your last name?

A. Allinson, A-l-l-i-n-s-o-n.

The Court: And it is Fred G.?

A. Fred G.

The Court: You may inquire.

Q. (By Mr. Howard): What is your occupation, Mr. Allinson? A. Supercargo.

Q. And by whom are you employed?

A. Various companies.

Q. Included in those companies is Pope & Talbot, Inc.? A. That's right.

Q. How long have you been working as a supercargo?

A. Oh, as a supercargo I should say ten, eleven, twelve years.

Q. And what was your occupation before that?

A. Checker, supervisor.

Q. Was that on the waterfront?

A. On the waterfront. [390]

Q. And has all of that work been here at Seattle? A. That's right.

Q. Now will you describe briefly to us what your duties are as a supercargo?

A. Well, I'm in charge of the ship for loading or discharging.

Q. And when you're doing those duties you're working for who?

A. For the shipping company, or the agent.

Q. Were you employed as a supercargo by Pope

(Testimony of Fred G. Allinson.)

& Talbot, Inc., on July 14-15, 1956? A. Yes.

The Court: Will you further specify what you mean by the words "shipping company" with respect to the operation of the ship? Whom do you mean, if anyone?

A. Well, the operators, Pope & Talbot, for instance, they are the shipping company, I work for them.

The Court: With respect to the movement of a ship and the carriage of cargo what is the relationship of the concern you call the shipping company?

A. Well, it would be the owners, I suppose.

The Court: The owners of what?

A. The owners of the ship.

The Court: You may proceed.

Q. (By Mr. Howard): Were you employed by Pope & Talbot, Inc., as a supercargo on July 14th and 15th, 1956, in connection with the steamer P & T Adventurer? [391]

A. I was.

Q. And do you recall where that ship was located at the time? A. Pier 48.

Q. Here in Seattle? A. That's right.

Q. And what type of operations were being conducted on the ship during that period?

A. We were discharging cargo.

Q. Now, what hours would you work, what hours did you work during that period of time?

A. Well, from six in the evening till five in the morning, or six in the morning.

(Testimony of Fred G. Allinson.)

Q. And was there another supercargo that worked the day shift? A. That's right.

Q. When you are working as a supercargo where do you station yourself? Where are those duties performed?

A. Well, at no set place. Either on the ship—in the case at 48 we have an office in the middle of the dock.

Q. And what is that office used for?

A. Well, for making your reports out or for figuring out your cargo.

Q. Now, at that time, Mr. Allison, who was performing the operations of discharging the cargo from the vessel? [392]

A. The stevedoring company, do you mean?

Q. Yes.

A. That would be Seattle Stevedoring Company.

Q. And who was performing the operations on the dock after the cargo was discharged from the vessel?

A. Well, I guess that would be Olympic Steam or Seattle Handling; I don't know what they call it.

Q. Were you present and a witness to an accident involving Mr. Jack Cordray, the plaintiff in this case? A. No.

Q. Do you know Mr. Cordray? A. I do.

Q. And do you know in what capacity he was working on the night of July 14-15, 1956?

A. Yes.

Q. What capacity was that?

A. He was foreman on the dock.

(Testimony of Fred G. Allinson.)

Q. And as a foreman on a dock what were the nature of his duties?

A. Well, to took after the bull drivers and make sure that the cargo is cleared away from the hatch.

Q. Did those pertain to the cargo after it had been discharged from the ship?

A. Well, it has to be put on the dock, inside the dock.

Q. And did Mr. Cordray have anything to do with the [393] discharging of the cargo from the ship? A. No.

Q. Did Mr. Cordray as dock foreman have anything to do with the operation of the cargo-handling gear aboard the ship? A. No.

Q. Did Mr. Cordray have anything to do with the manipulation of the booms or the swinging in or winging in of the booms on completion of the cargo discharging operations? A. No.

Q. In other words, all of his duties were on the dock? A. Yes.

Q. Now, do you have occasion as supercargo to talk from time to time with the dock foreman?

A. Yes.

Q. And what is the necessity for that?

A. Oh, it takes in a pretty wide range there of different things. We talk about cargo or how many men he has working for him or how many he's going to get, or——

Q. And where would such conversations take place?

A. They're liable to take place any place.

(Testimony of Fred G. Allinson.)

Q. Would you have occasion to go out on the dock from time to time during the discharging operations? A. Oh, yes.

Q. Would you have occasion to talk with the dock foreman on the dock? [394] A. Yes.

Q. You have mentioned that there is a dock office. Is that used for the purpose of exchanging information and coordinating your operations?

A. Well, not necessarily, but it could be.

Q. Is it done that way sometimes?

A. It is done, yes.

Q. Now, do you recall having seen Mr. Cordray aboard the P & T Adventurer on the night of July 14th or the early morning of July 15th?

A. No, I'm not sure that I saw him then.

Q. Did you have any occasion to talk to Mr. Cordray aboard the ship? A. No.

Q. If there were any orders or information to be given to the dock foreman regarding the progress of the ship's work, who would normally give those instructions orally? * * * * * [395]

A. Well, I would normally, yes.

Q. (By Mr. Howard): Do you know who the stevedore foreman was on the night of July 14th?

A. Mr. Peters.

Q. And what was his responsibility or duty?

A. He was in charge of the longshoremen.

Q. And those are the men working where?

A. Well, on deck, the deck men and the stevedores in the hold.

Q. Did Mr. Cordray have any duty or respon-

(Testimony of Fred G. Allinson.)

sibility as far as supervision of those longshoremen are concerned? A. No.

Q. Did you see Mr. Cordray after the accident occurred? A. I didn't, no.

Q. Did you have any occasion to check the gear or ship's equipment that was involved in the accident after it occurred? A. No.

Q. When did you first learn of the accident, Mr. Allinson?

A. Oh, around an hour after it happened, I guess.

Q. And where were you located then?

A. In the saloon having coffee.

Q. Do you know what the cause of the accident was? A. No, I don't.

Mr. Howard: That's all the questions I have.

Cross Examination

Q. (By Mr. Poth): What time did you go to work on the night of the 14th?

A. Now, do you mean——

Q. The 14th of July, 1956.

A. Well, what day was that?

Q. Well, it was the day——

A. Well, what I mean is, we carry our time—we start at six in the evening and we carry that 14th right through till such time as we quit in the morning.

Q. I believe the 14th was a Saturday and the 15th was a Sunday.

(Testimony of Fred G. Allinson.)

A. The 15th was a Sunday? I think—Saturday was the 15th, I think.

Q. Saturday was the 14th. What time did you go to work on the 14th on the P & T Adventurer?

A. Well, that would be six oclock in the evening, if it was in Seattle. If I remember right I think I worked in Olympia on Saturday night on the P & T Adventurer.

Q. You worked in Olympia on the P & T Adventurer on Saturday night, the 14th?

A. I'm not sure on the dates because I haven't checked back on it.

Q. Well, now, was the ship in Olympia when you were sitting in the saloon having coffee an hour after the accident [397] when you heard about the accident to Mr. Cordray?

A. Was it in Olympia? No, it was in Seattle.

Q. Well, let's just refer to the night that Mr. Cordray got hurt.

A. Yeah, O.K.

Q. What time did you go to work?

A. Yes, the night that Mr. Cordray got hurt.

Q. Yes. What time did you go to work?

A. Six o'clock.

Q. And where was the ship?

A. Pier 48 in Seattle.

Q. Where did you first go at six o'clock?

A. To the office in the middle of the dock.

Q. And what did you do in the office?

A. I got lined up with the day supercargo, what was going on, what operations were going on.

(Testimony of Fred G. Allinson.)

Q. You talked to the day supercargo, is that right? A. Pardon.

Q. You talked to the day supercargo?

A. That's right.

Q. What's his name? A. Tretheway.

Q. What did you next do? What did you do after that?

A. Well, I got lined up, and generally the foreman comes in about that time, and—— [398]

Q. Generally the foreman comes in. I'm asking you what happened at this particular time.

A. Well, I couldn't tell. That's a year—that's fifteen months ago. I couldn't tell what happened.

Q. When did you first leave that office?

A. Well, I can't recall that either.

Q. Do you recall going aboard the ship that night?

A. Oh, yes, I was aboard the ship.

Q. What time did you first go aboard the ship?

A. Well, I couldn't tell that either.

Q. Do you recall anybody you saw aboard the ship?

A. Well, naturally I'd see everybody that was working on the ship, yes.

Q. Well, who do you recall the names of?

A. Well, I'd have to name some longshoremen. I don't know what gangs were working. I don't remember what gangs were working that night.

Q. Do you know the names of any of the officers or mates on the ship? A. No, I don't.

(Testimony of Fred G. Allinson.)

Q. Do you remember what any of them look like?

A. Well, yes, naturally I'd know. Maybe the chief mate, if he'd happen to be aboard, I'd know him.

Q. What did he look like?

A. Well, I couldn't tell you that. [399]

Q. Did you ever go uptown that night?

A. No.

Q. What did you do at midnight?

A. I ate my lunch in the office.

Q. Do you remember any place you went particularly on the ship that night?

A. Yes. I was on the deck and to every hatch. That's my duty, to watch the cargo to see how it's coming out.

Q. How many hatches were working that night?

A. I don't recall that. I'd have to look at my daily report, I'd have to look back.

Q. Well, you do remember being in the saloon and having coffee? A. That's right.

Q. Where were you at the time Mr. Cordray got hurt?

A. Well, I was either on the ship or on the dock. I don't know which.

Q. Were you in the saloon having coffee?

A. No.

Q. When did you get to the saloon and have coffee?

A. Well, I don't know just the exact time.

(Testimony of Fred G. Allinson.)

Q. You're mainly supposed to be on the ship when you're supercargo, aren't you?

A. Well, the main duties are on the ship, yes, to see to the dispatching of the cargo, yes. [400]

Q. And you don't spend your time in your office on the dock, is that right?

A. Not all the time, no. I'm in there——

Q. Once in a while?

A. Yes, once in a while, maybe.

Q. But mainly you're on the ship?

A. Mainly, yes.

Q. Now, were you on the ship at 4:45 a.m.?

A. No, I don't think I was.

Q. Where do you think you were?

A. I think I was up in the office, because that would be just about quitting time.

Q. What time did that ship quit?

A. I'd have to look at the daily report to check back.

Q. Isn't it a fact that she worked till eight o'clock that morning?

A. If that was the day it sailed for Olympia, yes.

Q. She worked till eight o'clock, the work didn't quit at five o'clock?

A. No, that's right. That's why I say, I'm not sure on the dates. I've never looked them back up.

Q. Well, on the day when Mr. Cordray got hurt and you heard about it an hour afterwards while you were drinking coffee in the saloon, on that par-

(Testimony of Fred G. Allinson.)

shoremen, or when the longshoremen left the ship.

Q. Referring to a particular load that comes out of the hold of the ship, when did the responsibility of the longshoremen employed by Seattle Stevedore Company, when did their work end on a particular load?

A. Well, I suppose it would end just as soon as the dock bull driver picked up the load and took it in the dock.

Q. I see, and who is that dock bull driver employed by? A. He's hired by the dock.

Q. Not by Olympic—not by Seattle Stevedore Company?

A. That's right, not by Seattle Stevedore Company.

Mr. Howard: That's all.

Recross Examination

Q. (By Mr. Poth): Have you ever worked for American Mail Line? A. Yes, I have.

Q. Does American Mail Line own ships, vessels?

A. Yes, I guess they do. [404]

Q. Now, at the American Mail Line dock—where is that? A. Pier 88.

Q. It's out at Smith Cove?

A. That's right.

* * * * *

Q. (By Mr. Poth): Referring to Seattle Stevedoring Company, have you ever worked for Seattle Stevedoring Company? A. Never have. [405]

* * * * *

(Witness excused.)

The Court: Next witness.

Mr. Howard: Mr. Robinson.

SETH W. ROBINSON

called as a witness in behalf of defendant, being first duly sworn, was examined and testified as follows:

Mr. Howard: I would like to have before the witness Defendant's Identifications Nos. A-5 and A-6.

The Court: That will be done.

(The documents were placed before the witness.)

Direct Examination

Q. (By Mr. Howard): Will you state your name and your address, please? [406]

A. Seth W. Robinson. Route 2, Box 253, Alderwood Manor.

The Court: Will you pause for a moment. You asked for Defendant's Exhibits A-5 and A-6.

Mr. Howard: A-5 and A-6, not yet admitted.

Q. (By Mr. Howard): By whom are you employed, Mr. Robinson?

A. Waterfront Employers of Washington.

Q. Are you appearing here today in response to a subpoena duces tecum issued by this Court?

A. Yes, sir.

Q. Did you bring with you records concerning the employment and the earnings of Mr. Jack Cordray?

A. Yes, I did.

Q. Now, before you have been placed Defend-

(Testimony of Seth W. Robinson.)

ant's Identifications A-5 and A-6. I will ask you to compare those with the records which you have and then I would like to ask you some questions on them. Does the exhibit bearing date of March 1, 1957, correctly reflect the amounts received by Mr. Cordray through Waterfront Employers Association for work performed on the Seattle waterfront as a longshoreman, a dock worker or a dock foreman?

A. Yes, sir. That would also include all ports in the State of Washington excluding Vancouver.

The Court: Washington?

A. In the State of Washington, yes, sir. [407]

Q. (By Mr. Howard): Excluding Vancouver, Washington?

A. And the Columbia River area.

Q. Would you explain to the jury, please, the system for paying longshoremen? Are they paid directly by the company that they work for, or what is the arrangement?

A. We have two types of payrolls, one in which we handle all the records——

The Court: "We," who is "We"?

A. Waterfront Employers of Washington. The companies submit the time to us to consolidate and pay the man and take taxes and et cetera and report taxes at the end of the year.

The other type of payroll which we call non-consolidated payroll, the man is paid by the stevedoring company but we still maintain the records and taxes and report those at the end of the year.

(Testimony of Seth W. Robinson.)

Q. (By Mr. Howard): And are the amounts paid from both of those methods included in the figures which appear in the report under date of March 1, 1957? A. Yes, sir.

Q. And have you checked those now?

A. Yes.

Q. And are they correct as to the amounts for each of the years from 1951 through 1956?

A. Yes, they are. [408]

Q. And for the period up to February 25th of 1957? A. That is correct.

Q. Now referring to the other exhibit under date of October 4, 1957, I will ask you to check that with your records on Mr. Cordray as to earnings for each calendar month through September in 1957.

(Brief pause.)

Q. Have you done so? A. Yes.

Q. Will you state whether or not the amounts shown for each month during that period are correct? A. Yes, they are.

Q. And do those represent the total earnings received by Mr. Cordray for each of those months for service at any port in the State of Washington excluding Vancouver, Washington, for services as a longshoreman, a dock worker or a dock foreman?

A. That is conforming with our records of what we have recorded.

Q. That's what your records show?

A. Yes.

The Court: Will you state again the beginning

(Testimony of Seth W. Robinson.)

time and the ending time of the period of time covered by your last statement? Again what month, what year, and ending what month of what year?

A. Well, the first record showed total wages for——

The Court: No,——

A. Just for the month?

The Court: I want to know the time involved in these records, the earliest date and the latest date.

A. Well, our records go from 1951 that were——

The Court: What month, if you know?

A. That actually is December 26th of 1950, which we record in the year 1951.

The Court: And going down to what month as the latest month included in these records?

A. We go through the month of September.

The Court: What year?

A. 1957.

The Court: You may proceed.

Q. (By Mr. Howard): And is that for the complete month of September of 1957?

A. No, sir, that excludes the last four days, the Monday preceding the last——

Q. Have the records been completed yet for the calendar month of October of 1957?

A. They are in process now.

Q. In process? A. Yes, sir. [410]

Mr. Howard: I again offer in evidence Defendant's Exhibits A-5 and A-6.

The Court: Did Counsel hear? Let Mr. Poth have what he wishes, if it is available.

(Testimony of Seth W. Robinson.)

Mr. Poth: Thank you, your Honor.

The Court: Did Mr. Poth hear the offer?

Mr. Poth: Yes. I have no objection, your Honor.

The Court: Each of those exhibits mentioned by Mr. Howard is now admitted, namely, A-5 and A-6, each of them.

(Defendant's Exhibits Nos. A-5 and A-6 for identification were admitted in evidence.)

[See pages 457-458.]

Mr. Howard: I would like to have those passed to the jury.

The Court: That will be done.

(The exhibits were passed to the jury.) [411]

* * * * *

Mr. Howard: I have no further questions of this witness, your Honor.

The Court: You may cross examine.

Mr. Poth: May I have this marked for identification?

The Court: That will be done.

The Clerk: It will be marked Plaintiff's Exhibit No. 7.

(A letter dated October 14, 1957, re hours worked by Jack Cordray, was marked Plaintiff's Exhibit No. 7 for identification.)

The Court: Can you attach to it a name that you think will be agreeable to opposing Counsel?

Mr. Poth: Pardon?

The Court: Can you attach to this Plaintiff's Exhibit 7 for identification a name?

Mr. Poth: Yes.

(Testimony of Seth W. Robinson.)

The Court: Which you think would not be objectionable to opposing Counsel?

Mr. Poth: Record of hours.

The Court: Do you mean plaintiff's compiled earnings record?

Mr. Poth: Yes.

The Court: You may proceed. [412]

Cross Examination

Q. (By Mr. Poth): Showing you what has been marked for identification as Plaintiff's Exhibit 7, I'll ask you whether or not that is the Waterfront Employers' record of the hours of work performed by Jack Cordray? A. Yes, that is.

Q. It is? A. Yes.

Q. And for what years?

A. 1949 through September 30, 1957.

Mr. Poth: I'll offer that in evidence.

Mr. Howard: No objection.

The Court: Admitted.

(Plaintiff's Exhibit No. 7 for identification was admitted in evidence.)

[See page 451.]

Mr. Poth: And may that be passed to the jury, please?

The Court: That will be done.

Mr. Howard: May I interrogate the witness about the exhibit after—excuse me.

The Court: The Court's statement is now amended to admit that, after which it will be passed to the jury for their temporary inspection.

(Testimony of Seth W. Robinson.)

Mr. Howard: Before it is passed to the jury [413] I would like to ask a question or two.

The Court: That is what the Court is now providing. Have you finished interrogating this witness?

Mr. Poth: Yes, your Honor.

Redirect Examination

Q. (By Mr. Howard): Do you know what has been cut off the exhibit, Mr. Robinson?

A. It appears to be the earnings corresponding to the hours by year.

Mr. Poth: If I might say, your Honor, that is not any earnings. There was some comment written by my client which I cut off. I have it right here and Counsel may see it, the comment that he wrote on it. I'll give it to the Court——

The Court: Let Counsel see it, if you have no objection.

(Mr. Poth handed a paper to Mr. Howard.)

Mr. Poth: I didn't feel it was proper to have my client's comment on it.

The Court: That explanation is sufficient.

Mr. Howard: May I see the exhibit?

The Court: You may.

(Plaintiff's Exhibit No. 7 was handed to Mr. Howard.) [414]

* * * * *

The Court: The witness is excused. Do you wish to permanently excuse him? [415]

* * * * *

ALFRED L. ARVIDSON

called as a witness in behalf of defendant, being first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination

Q. (By Mr. Howard): What is your address, Mr. Arvidson? [416]

A. 3715 34th Avenue Southwest, Seattle.

Q. What is your present occupation?

A. I'm the assistant district manager for the States Steamship Company, Seattle.

Q. And what was your occupation as of July 14-15, 1956?

A. District operating manager for Pope & Talbot, Incorporated.

Q. Does Pope & Talbot now have its offices here in Seattle? A. No.

Q. When were those discontinued?

A. I think the 1st of February, '57.

Q. How long had you been employed by Pope & Talbot?

A. Since July, 1926, till the first of February of '57.

Q. What different types of work were you doing during that period?

A. Oh, starting in as clerical work and then pretty much in the operating department, assisting in the operating department.

The Court: Did you say the beginning of that service with Pope & Talbot was in 1926?

A. 1926, yes.

(Testimony of Alfred L. Arvidson.)

The Court: You may inquire.

Q. (By Mr. Howard): Have you ever had any experience on ships as an officer or member of the crew? A. No, sir. [417]

Q. All of your experience with Pope & Talbot has been as a shoreside employee? A. Yes, sir.

Q. Now, were you present aboard the P & T Adventurer at the time of an accident on the early morning of July 15, 1956? A. No, sir.

Q. Do you recall how you first learned of that accident?

A. Oh, my recollection, of course it could be wrong, it's a long time ago, but it seems to me that it was on a Monday morning the supercargo on the ship, at that time the ship was at Olympia, asked me if I had heard about an injury, an accident that had happened at Pier 48 before the ship had left for Olympia. It seems to me it was a Monday morning that he asked me about it, and it would be my recollection it might have been a Sunday morning that the ship had left Pier 48 for Olympia. That could be wrong, but I know there was a little time intervening, possibly a day.

Q. At that time, namely, on July 14-15, 1956, did Pope & Talbot, Inc. have any contract with any company with respect to the operations of loading or discharging cargo from its vessels at Seattle?

A. Yes. For the stevedoring of the vessel, that would be—that contract was with the Seattle Stevedoring Company. [418]

(Testimony of Alfred L. Arvidson.)

Q. And what did that contract cover? What was the extent of the operations covered by that contract?

A. Well, that was to stevedore, handle the cargo from in the ship's hold to the end of ship's tackle, or—and in loading cargo to take the cargo at tackle at the ship's sling and take it aboard and stow it away.

The Clerk: Defendant's Exhibit A-9.

(Correspondence re contract was marked Defendant's Exhibit No. A-9 for identification.)

* * * * *

The Court: Now wait just right there. What is your contention on that point? Do you agree up to this point about what the contractors and each of them agreed to do? Is that in accord with your understanding of this situation?

Mr. Howard: Well, your Honor, I agree that the admitted fact is that the Seattle Stevedoring Company had a contract with Pope & Talbot to load and discharge cargo from the vessel. I also agree that Pope & Talbot had arranged with Olympic Steamship Company as a public terminal operator to handle that cargo on the dock.

The Court: The public terminal operator?

Mr. Howard: As a public terminal operator.

The Court: Then I do not see how—whose invitation or contract started whichever one of these stevedores, contracting stevedores, to work on the dock and on the ship? Whose word was it that started one working on the ship and the other one working on the dock?

Mr. Howard: Pope & Talbot, your Honor.

Mr. Poth: Pope & Talbot, your Honor.

The Court: Pope & Talbot in both instances put out the word that put the two stevedoring concerns to work, is that right? [426]

Mr. Howard: I don't think there is any dispute about that in the evidence.

The Court: And you do not seek to show it was for any other purpose, it was for the purpose of discharging the steamship carrier's obligation to carry and deliver cargo to the consignee that these two things were done?

Mr. Howard: Yes. We haven't had testimony on that, but I expect this witness will give that testimony. [427] * * * * *

The Court: But it is now amended by the pre-trial order, all agree, to state what the true facts were with respect to what part of the work each contractor did?

Mr. Howard: That's correct, your Honor. [429]
* * * * *

The Court: The Court advises Counsel in the case, in view of all that has here been said and in reliance upon what has here been said as correctly stating the positions of respective Counsel, that the Court sees no conflict between any admitted fact, those stated in the pretrial order and those stated supplemental thereto during this trial, which is at variance [447] with the evidence sought to be adduced as declared by Mr. Howard by this exhibit marked for identification Defendant's Exhibit A-9 up to this time. [448]* * * * *

ALFRED L. ARVIDSON

(Resumed the stand.)

Mr. Howard: May we have before the witness—

The Court: Defendant's Exhibit A-9?

Mr. Howard: A-9.

The Court: That will be done.

(The exhibit was placed before the witness.)

Mr. Poth: I have no objection to the offering of that, your Honor.

The Court: Did you offer it or do you now?

Mr. Howard: I offer it now.

The Court: It is admitted, A-9. [515]

(Defendant's Exhibit No. A-9 for identification was admitted in evidence.)

Mr. Howard: Your Honor, has A-10 been admitted?

The Court: It has, for the limited purpose stated by Counsel when offering it and for no other purpose. It is received in evidence and the jury must not consider it for any purpose other than under the limitations stated by Counsel offering it, namely, in effect, that it is offered merely to illustrate, not what it says or shows, but what the witness orally stated from the witness stand.

* * * * *

Direct Examination—(Continued)

Q. (By Mr. Howard): What was the extent of the responsibility of the Seattle [516] Stevedore Company with respect to the discharging of cargo from the P & T Adventurer on July 14th and 15th?

(Testimony of Alfred L. Arvidson.)

The Court: Excuse me. The original of A-9 is now returned to Counsel who produced it.

Q. (By Mr. Howard): Did you get the question, Mr. Arvidson?

A. Yes. Well, their responsibility, their contract called for discharging the vessel, having the longshoremen aboard and the foreman and rigging the gear and having the men put the cargo on pallets and in the sling and then it's hoisted by the ship's gear to the dock and then—at ship's tackle, the sling comes down onto the dock, the stevedoring company has two sling men in their gang who unhook the load, and that's the end of their responsibility.

Q. Did the Seattle Stevedore Company have anything to do with moving the cargo from that point where it landed on the dock into the warehouse? A. No, sir.

Q. Who did that work?

A. The Olympic Steamship Company.

Mr. Howard: May the witness have before him Plaintiff's Exhibits 3 and 4?

The Court: That will be done.

(The exhibits were placed before the witness.) [517]

Q. (By Mr. Howard): Are you familiar with the documents before you now as Plaintiff's Exhibits 3 and 4? A. Yes, sir.

Q. Will you state whether or not those—what are they?

(Testimony of Alfred L. Arvidson.)

A. Well, they are tariffs for terminal—for dock work.

Q. Were those tariffs in effect and applicable to the operations being performed by Olympic Steamship Company at Pier 48 in connection with the cargo which was being discharged from the P & T Adventurer?

A. Well, they certainly——

Mr. Poth: We so stipulate, your Honor.

Mr. Howard: May we have an answer to the question, your Honor?

The Court: You may.

A. I would say that they are. It's what we work with, if the date is correct on them, if they are up to date for that particular time.

The Court: Will you apply to each of them a name which you think characterizes each so that we can by a name distinguish one from the other? What is Plaintiff's Exhibit 3? That is, referring to the manner by which you as a waterfront man would refer to it to distinguish it from some other thing.

A. Well, I would say this charge is for the account of the vessel. They go through here and see [518] what it would be.

The Court: You may proceed. The Court's question remains unanswered according to the Court's view of it. Proceed.

Q. (By Mr. Howard): Did Pope & Talbot, Inc. have any other contract or arrangement with Olympic Steamship Company with respect to the han-

(Testimony of Alfred L. Arvidson.)

dling of cargo discharged from the P & T Adventurer on July 14th and 15th? A. No, sir.

Q. Did the Olympic Steamship Company have anything to do with the actual physical discharge of the cargo from the holds of the vessel to the dock? A. No.

Q. Whose responsibility was it to wing in the gear that had been in use by the longshoremen on the ship?

A. The stevedore company, Seattle Stevedore Company.

Q. Whose responsibility would it be to supply hatch tents if hatch tents were required?

A. We always—it's always the stevedore company that supplies them.

Q. During the course of loading and discharging operations aboard the P & T Adventurer at Seattle would there be any occasion for any other workers or persons to come aboard from ashore?

A. Well, when a ship is in port there are quite a few [519] people come aboard. You have the—well, to start with, the Customs officials, the Immigration and Quarantine, Public Health. You could have surveyors, you could have shipyard workers, laundrymen, for a few.

Mr. Howard: I have no further questions.

The Court: You may cross examine.

Cross Examination

Q. (By Mr. Poth): Referring to Pope & Talbot's contract of carriage, that is the contract with

(Testimony of Alfred L. Arvidson.)

shippers, does Pope & Talbot's duty end at ship's tackle or is Pope & Talbot still responsible for having the cargo stored and tiered on the dock at first place of rest where the consignees can take it over?

A. Well, it depends on what trade that the ship is operating in. This is an intercoastal ship, and I'm sure the tariff calls for the cargo to be at place of rest on the dock.

The Court: From whose hands?

A. Sir?

The Court: From whose hands, please, with respect to the contract of carriage?

A. The intercoastal tariff would call for—the cargo would be at a place where the teamsters could [520] come down and pick it up.

The Court: That does not answer the Court's question. Does it say who shall put it there, whether the ship or somebody else will put it there, or if not either the ship or anyone else, how does it under the tariff applicable to the operation get to the place you mention?

A. It's rather hard for me. I'd like to find that in the tariff and I could tell you better. I'm sure that the rate, the intercoastal rate of so much a hundred pounds is from a place of rest on the dock on the east coast or from a car or a barge to——

The Court: The Court's question is not concerned with the rate. The question the Court asked you is if you know who, if anyone, agreed

(Testimony of Alfred L. Arvidson.)

here to handle this cargo in the manner that you have just stated. A. Well, I——

The Court: To bring about the result which you have just stated.

A. Pope & Talbot in order to follow the terms of their contract of freighting under the tariff arranges with someone to put the cargo at this place of rest on the dock.

The Court: You may inquire.

Q. (By Mr. Poth): And that place of rest on the dock is not [521] at the end of ship's tackle, is it, where it's temporarily disconnected for carriage across the dock to the place of rest?

A. Some cargo could be at the end of ship's tackle into a carload, into a car.

Q. Into a car. Well, I'm talking about cargo that doesn't go into a car, cargo that has to go into a warehouse and be piled or stowed.

A. That would be after it has been handled on the dock.

Q. Yes. A. And taken off the boards, yes.

Q. And not at the end of ship's tackle?

A. That's right.

* * * * *

(Witness excused.) [522]

* * * * *

SIDNEY RAYMOND CARLSON

called as a witness in behalf of defendant, being first duly sworn, was examined and testified as follows:

(Testimony of Sidney Raymond Carlson.)

Mr. Howard: May we have Defendant's Exhibits A-4 and A-7 placed before the witness?

The Court: That will be done.

(The exhibits were placed before the witness.)

Direct Examination

Q. (By Mr. Howard): Will you state your full name, please?

A. Sidney Raymond Carlson.

Q. What is your residence address, Mr. Carlson?

A. 1318 North Callow, Bremerton, Washington.

Q. What is your present employment?

A. Chief Mate of the S. S. P & T Adventurer.

Q. And where is that ship at the present time?

A. She's laying at Pier 28 in Seattle. [471]

Q. How long have you been employed by Pope & Talbot, Inc.?

A. Since December of 1950.

Q. And how long have you been going to sea?

A. Well, this is my seventeenth year.

Q. That type of vessel is the P & T Adventurer?

A. It's a Victory type vessel.

Q. And what type of trade is it engaged in?

A. It's engaged in the intercoastal trade.

Q. How long have you served aboard the P & T Adventurer?

A. Well, I have been aboard her in various capacities. I made—let me see, I was on the vessel—at the time the accident happened, I joined the vessel on March the 9th of that year and left her

(Testimony of Sidney Raymond Carlson.)

in September. Then I came back in December of that year for another trip, then I joined her again this last—I guess it was in July.

Q. Were you Chief Mate on the P & T Adventurer on July 14th and 15th of 1956?

A. Yes, I was.

Q. Were you aboard the vessel at the time an accident occurred to Mr. Cordray on the early morning of July 15th? A. I was not.

Q. When had you last been aboard the vessel?

A. At, oh, early in the afternoon. About four o'clock in the afternoon of the day before I left and went home.

Q. And when did you next rejoin the vessel?

A. I came there the morning after the accident happened, I came aboard that morning.

Q. And where was the ship then?

A. Well, I joined her in Olympia.

Q. At Olympia. Where was the ship when you left it on the evening of July 15th?

A. It was laying on the north side of Pier 48 in Seattle.

Q. What operations were being engaged in aboard the ship at that time?

A. They were discharging cargo.

Q. Who was doing that work, if you know?

A. I believe it was the Seattle Stevedoring Company.

Q. Mr. Carlson, generally speaking or just in general outline, what are the duties of a Chief

(Testimony of Sidney Raymond Carlson.)

Mate aboard a vessel such as the P & T Adventurer? Describe the duties.

A. Well, they vary. There's quite a wide span. It's the primary duty of the Chief Mate to take care of the cargo operations of the vessel, see that the cargo is stowed properly, discharged properly, and that the cargo gear is in suitable condition to discharge the cargo, also to keep up the general appearance of the vessel, note any damage or any misuse of gear on the vessel. We also take care of the ship's medicine chest, assist with the payrolls, and assist the Captain in keeping the ship sanitary, and almost anything that comes up. [473]

Q. Before you left the vessel on the 14th of July did you make any observation as to the condition of the cargo-handling gear at the number two hatch?

A. Not a specific inspection of that particular gear, but I had been on deck and as usual made—when we're discharging cargo I try to get on deck as often as possible and look both on deck and aloft to see that things are in proper order.

Q. When you returned to the ship at Olympia on July 15th did you make any particular observation or inspection of the cargo-handling gear at the number two hatch?

A. Yes. Since it was brought to our attention that there had been an accident I went out immediately and looked at it and was shown what had happened, and then I—always when I join a vessel or come aboard in the morning if I've been

(Testimony of Sidney Raymond Carlson.)

gone I look and see the way the gear is rigged, that there are no parts of the gear rigged wrong so that they might part due to being rigged wrong, or make a general inspection.

Q. Were you present aboard the ship at Olympia when some pictures were taken by a commercial photographer? A. I was.

Q. And when was that?

A. As I recall it was in the either late forenoon or early afternoon of that day, the day the ship got to Olympia. [474]

Q. And what——

The Court: I wish we could have that date stated in this connection.

Q. (By Mr. Howard): What date would that be, Mr. Carlson? The accident happened on the early morning of July 15th at Seattle.

A. Well, I guess—I don't recall whether we shifted that day or it was the next day to Olympia, but it was—I don't recall the date right—it was the day that the photographer came down and that the attorney was aboard the vessel investigating it.

Mr. Howard: May the witness have placed before him A-1, the log book of the vessel?

The Court: That will be done.

(The exhibit was placed before the witness.)

The Court: Will you name that attorney?

A. I believe his name was Soriano, as I recall.

Q. (By Mr. Howard): By reference to the log book, Mr. Carlson, can you determine when the vessel shifted to Olympia?

(Testimony of Sidney Raymond Carlson.)

A. Yes. I was just looking here. The vessel shifted starting at 7:38—they finished the cargo at 7:38 that morning. [475]

The Court: What morning, what date?

A. The morning of July 15, 1956, and at 7:46 the engines were put on standby preparatory to leaving the dock.

Q. (By Mr. Howard): And when did the ship arrive at Olympia?

The Court: If it did arrive there.

A. The vessel was all fast and tied to the dock in Olympia at 11:38 the morning of the 15th, 1956.

The Court: The hour, please, again?

A. 11:38, sir.

Q. (By Mr. Howard): And when did you re-join the vessel with relation to that time that you just mentioned?

A. I came aboard the vessel that morning in Olympia.

Q. That morning? A. When she docked.

Q. Mr. Carlson, will you describe to us briefly the relationship and the division of responsibility as between the mates of the vessel, the supercargo and the stevedore foreman?

A. Well, the Chief Mate is in direct charge of the cargo operations subject to the Master's discretion. The junior mates, the second, third and fourth mate, are under the direct responsibility of the Chief Mate to see that cargo operations are carried out and that pilferage doesn't occur and that proper stowage is [476] made and to check on

(Testimony of Sidney Raymond Carlson.)

the operation in general. The responsibility for the distribution of the cargo lies with the supercargo. He has information as to the amount of cargo, the type, and all the information about the cargo when the vessel comes in and he plans the loading of the vessel and discusses with the Master and the Chief Mate his ideas of how he should load the cargo.

Q. How about the discharging operation?

A. The same occurs on the discharge. He receives a plan of the cargo in the vessel from us that is made up by the supercargo where the vessel was loaded and checked by me ahead of time, and he calls the necessary stevedores, arranges for the necessary equipment and gear and sees that everything is there that is necessary to discharge the cargo, and also takes care of incidentals such as calling, oh, various things like trash wagons to remove debris from the ship and any of those operations.

And the stevedore foreman is directly in charge of the men themselves that are working on the ship. He rigs the gear. When the ship comes in the booms and the cargo-hoisting gear is up in position but not in a position actually to work the cargo, as it were, because of the fact that the booms must be inboard [477] of the ship so they won't hit the dock when the vessel is brought in. Then when the stevedores come aboard the foreman delegates the gangs of stevedores to the various hatches.

Q. What foreman is that?

(Testimony of Sidney Raymond Carlson.)

A. The stevedore foreman. And then they adjust the booms and the cargo-hoisting gear to suit the necessity of where they are going to discharge the cargo. The gear has to be spotted so that the hook that the cargo is hooked on comes down directly over the cargo, so that it necessitates them adjusting the gear to suit themselves.

Q. Who is directly responsible for the physical operation of removing the cargo from the holds of the vessel and placing it on the dock?

A. The stevedores load the cargo, depending on the type, on pallet boards and hoist it ashore, or if it's heavy cargo, it might be slings put on the cargo and hoisted out to the hooks, but it is the stevedores that move the cargo bodily from the holds and onto the dock.

Q. Are you familiar with a worker known as a dock foreman? A. Yes.

Q. At Seattle? A. Yes.

Q. What are the duties of a dock foreman?

A. The dock foreman takes care of the wharfmen, the fellows [478] that receive the freight from the ship's side. They have a plan of how they wish the cargo to be, according to the bills of lading and consignees, so that the cargo is placed on the dock in such a way that it can be distributed by the shipper as the consignees call for it with their trucks.

Q. Are the men working under the dock foreman members of a union? A. Yes.

Q. And what is the name of that union?

(Testimony of Sidney Raymond Carlson.)

A. The Longshoremen and Warehousemen's Union.

Q. Longshoremen and what?

A. Warehousemen's Union.

Q. Now, Mr.—

The Court: May I ask, what if any union were those who on this occasion were working inside and on the ship members of?

A. They are members of the Longshoremen and Warehousemen's Union, the same as the men on the dock.

Q. (By Mr. Howard): That's all one union, the Longshoremen and Warehousemen's Union?

A. Yes, sir.

Q. Not two unions?

A. Not that I know of, no, not here in this port.

Q. Referring you to the pictures which are before you as [479] A-7 and A-8, I'll ask you if you can identify those as to the pictures which were taken at the time you describe on July 15th or thereabouts? A. They are the pictures.

Q. And were you present when those pictures were taken?

A. I was present when they were taken.

Q. Now, Mr. Carlson, I'll ask you if you can find on either one of those pictures a gin block?

A. I can.

Q. Would you encircle that with a pen, please, and mark it out in the margin "Gin block" with a line leading to it?

(Witness does as requested.)

(Testimony of Sidney Raymond Carlson.)

Q. What is the function of a gin block?

A. The gin block provides a frictionless means of securing the hoisting wire to the head of the boom. In other words, it provides a vehicle for the hoisting wire to run through so that the wire goes from the winch on the deck of the vessel to the head of the boom and through the gin block and back to the cargo hook, the reason for the booms being to get the cargo up in the air to clear all the things on the ship's side.

Q. It carries the cable or wire then that is used in lifting the cargo, is that correct?

A. That is true. [480]

Q. Now would you look again at those pictures and tell me if you see in there a guy?

A. I do.

Q. Would you mark the guy on one of the pictures, whichever one it shows most distinctly on?
(Witness does as requested.)

Q. And also is there a preventer appearing in either one of those pictures? Now have you marked the guy on the picture? A. Yes, sir.

Q. Look at the back. Which number is that?

A. This is A-8.

Q. On A-8. Have you marked the preventer on A-8? A. No, I haven't.

Q. Will you mark an arrow or something to the preventer?

A. Well, it just shows briefly here.

Q. Does it appear better in the other photograph, Mr. Carlson?

(Testimony of Sidney Raymond Carlson.)

A. Yes, the preventer appears better in the other photograph.

Q. Would you mark the preventer on the other photograph? That would be A-7.

(Witness does as requested.)

Q. What is the function of the guy and the preventer?

A. They act to hold the boom in position as the cargo is [481] being hoisted. If they weren't there the booms would find themselves in a position directly over the cargo, so in order to hold the booms out over the dock so that the cargo can be hoisted to the dock they must be held back into that position. The side guy makes the adjustable part of it. The preventer aids the side guy and acts as an additional safety factor. It has no moving parts and it's chained back into position when the proper setting is found. The preventer is made fast, then the two of them are adjusted by the guy until they take an equal part of the load, so that there's a load on both of them.

Q. They bear the load from the boom and whatever is suspended from the tackle at the end of the boom?

A. Yes. It's not a direct load. They keep the—they bear the load of keeping the boom in position for hoisting. The direct load is supported by the cargo-hoisting runner.

Q. Yes. Now, Mr. Carlson, what is a shroud?

A. Shrouds are large wires made fast to the deck head with turnbuckles that run to the head

(Testimony of Sidney Raymond Carlson.)

of the mast to keep the mast in position from strain and stresses of working cargo.

Q. Is there a shroud visible in either one of these pictures? A. Yes, there is. [482]

Q. And on which picture, please?

A. That is on A-7.

Q. Would you mark it on A-7, please?

(Witness does as requested.)

Q. Is there a Samson post or king post visible in either one of those pictures?

A. Yes, there is.

Q. At what hatch?

A. The number three hatch at the after end.

Q. Would you mark that, please.

(Witness does as requested.)

Q. Now, is there a Samson post or king post at the number two hatch where this accident occurred?

A. No, there isn't.

Q. What is there in lieu of a Samson post or king post?

A. There is a mast that is stepped from the deck and a mast house built around it.

Q. Is the mast house or any portion of it visible in either one of those pictures?

A. Yes, it is.

Q. Would you mark the mast house and mark an arrow to it?

(Witness does as requested.)

Q. Is any part of the mast itself at number two visible in the pictures?

A. Only the very tip of the crosstree. [483]

(Testimony of Sidney Raymond Carlson.)

Q. What is the crosstree?

A. Well, that's an extension from the top of the mast that goes out towards the side of the ship that supports the boom. It supports another block called the topping block.

Q. Is there any portion of the mast extending above the crosstree?

A. Not of the part that supports the weight, no.

Q. Will you mark by an arrow the crosstree as it appears in the picture?

(Witness does as requested.)

Q. Now, is there any hatch tent gantline intact visible in either one of those pictures?

A. Yes, there is.

Q. And at what hatch is the one visible?

A. The one that's completely visible is at the forward end of number three hatch.

Q. On which side of the ship?

A. That would be on the starboard side of the ship.

Q. Now will you draw an arrow to identify that hatch tent gantline? I would suggest that it be to the upper part of the hatch tent gantline.

(Witness does as requested.)

Q. Is there any other hatch tent gantline or portion of a hatch tent gantline visible in either one of those [484] pictures?

A. In both photographs the remains of a hatch tent strap, the block supporting strap, is there.

Q. On what boom?

A. On the starboard number two boom.

(Testimony of Sidney Raymond Carlson.)

Q. And is that marked now in the picture, on either one of those exhibits?

A. Yes. It says "Gantline".

Q. Is it identified correctly as to what you now refer to?

A. Yes. It might be a little confusing as to the arrow, but——

Q. How about on the other picture, is it marked? A. It's not marked on A-7.

Q. Would you mark it, please, on A-7?

(Witness does as requested.)

Q. Did you have occasion to observe that upper portion of the hatch tent gantline or strap at the number two starboard boom when you returned to the ship at Olympia? A. From the deck, yes.

Q. Will you state whether or not as you observed it it appeared the same as it now appears in this picture? A. Yes.

Q. Is there any difference?

A. It appears exactly as it looked the morning I observed it. [485]

Q. What does that appearance indicate to you as far as the cause of the break is concerned?

A. It appears to me than an unusual strain beyond the capabilities of the wire was put on it.

Q. Why?

A. Because of the fact that the strap was not being used properly. In fact, it should not—it was not being employed and was made fast, and as the boom was winged in rather rapidly a strong strain was put on it and it parted the strap.

(Testimony of Sidney Raymond Carlson.)

Q. What about the appearance of the strap in the picture causes you to state that?

A. Because the wire—I've seen many wires part, and wire under an extreme strain begins to part a strand at a time, and then the load on the wire itself becomes distorted and will tear the wire out in unusual forms. It unravels it and tears it and generally destroys it.

Q. How long did that upper portion of the wire strap remain attached to the tip of the number two starboard boom?

A. The strap was still on the tip of the boom, the portion of it, when I left the vessel in New Jersey in September, the first part of September.

Q. Had the number two booms been lowered prior to that time? A. They had not. [486]

Q. And why not?

A. Because when the vessel loads on the West Coast we take lumber on deck and the lumber is piled high enough that in order for the boom to be lowered, the lumber would get in the way. In other words, the arm effect of the boom coming down would strike the lumber and it makes it impossible to lower the boom.

Q. What is done with the booms then when they are secured for sea?

A. In the crosstrees of the masts are collars, and the booms are brought into an upright position and made fast in the crosstree themselves in order to keep them there.

Q. Referring you again to these pictures, Mr.

(Testimony of Sidney Raymond Carlson.)

Carlson, I'll ask you whether there is any portion of the gantline itself, the Manila, lower portion of the hatch tent gantline, for any of the hatches visible in the pictures? A. Yes.

Q. And where is that?

A. Made fast to the block that I have pointed out here.

Q. I'm talking about the lower portion of any hatch tent gantline.

A. Yes, there's one in this photo here running from the block down to the deck.

Q. And made fast where? [487]

A. This one appears to be made fast to the bull rail. I can see the line there. It doesn't appear to be bent on at all, it seems to be just standing there. I would say that this one is made fast to the shroud, because it's laying loose over the rail and there's knots on the bottom as though it were made fast to the shroud.

Q. Would you draw an arrow to that, please?

A. Yes.

(Witness does as requested.)

Q. On which exhibit are you doing that?

A. A-7.

Q. Is there any portion of the hatch tent gantline for the number one starboard boom visible in either one of these pictures?

A. The number one?

Q. Number one. A. Yes.

Q. And where is that made fast?

(Testimony of Sidney Raymond Carlson.)

A. It's made fast to the railing at the after end of the hatch.

Q. Now would you mark that "No. 1 gantline"?
(Witness does as requested.)

Q. Did you observe the Manila of the gantline at number two starboard boom when you returned to the ship on July 15th at Olympia? [488]

A. Of the number two boom?

Q. Number two. A. Yes.

Q. Was it made fast anywhere?

A. No, it was lying on deck when I seen it.

Q. Did you observe that gantline before you left the ship on July 14th?

A. Not specifically. I might have observed it in passing, but there was nothing unusual to make a mental note of.

Q. Where are they usually made fast?

A. If they're in use, one end is made fast to the tent itself and the other to the deck some place where there's an available cleat.

Q. Assuming that there is no hatch tent in use, where would they be made fast?

A. The ends of the gantline are knotted together to make an endless line so that it can't be lost out of the block, and they're generally taken back out of the way of the working rigging, since they're not in use, and made fast some place to keep them out of the way.

Q. Would that be similar to that shown for number one gantline in A-7?

A. Yes. The number three shows it definitely

(Testimony of Sidney Raymond Carlson.)

back and out of the way, because if it weren't made fast it would hang directly into the loads of cargo and be in the way [489] for working.

Q. Now, you have referred to the position of booms when you have a deck load being secured in an upright position? A. Yes.

Q. I wonder if you would take the sheet of paper which has been placed before you marked as Exhibit——

Mr. Howard: Is it A-10?

The Clerk: It will be A-10, Defendant's A-10.

(A sheet of paper was marked Defendant's Exhibit No. A-10 for identification.)

Q. (By Mr. Howard): And draw a sketch on that showing how the boom at number two hatch would be secured for sea with a deck load.

A. With a deck load?

Q. With a deck load of lumber.

The Court: Is that to illustrate something he has already said or something you are about to ask him?

Mr. Howard: I was going to ask him about it.

The Court: Ask him the question orally first. It may not be material.

Q. (By Mr. Howard): When the boom at number two hatch is secured for sea with a deck load of lumber, is there a collar? [490] A. Yes.

Q. And where is that collar located with reference to the upper end of the boom?

A. Well, it's something — it's in the crosstrees

(Testimony of Sidney Raymond Carlson.)

and the boom extends up roughly I would say between ten and fifteen feet above the collar.

Q. And how is the hatch tent gantline secured when the boom is in an upright position prepared to go to sea?

A. Well, with a deck load the gantlines are brought out away from the boom so that they're tied off on the lashing chains on deck in order to keep them from chafing as the wind blows them back and forth so that they won't get rubbed or chafed to the point so as to weaken them.

Q. Can you draw a picture describing that that you have just now testified to? A. Yes.

The Court: Using Defendant's Exhibit A-10 for identification for that purpose.

(Witness draws on Defendant's Exhibit No. A-10 for identification.)

Q. (By Mr. Howard): Have you marked on this Identification A-10 the various parts of the ship's gear and fixtures that you have referred to in your testimony this morning?

A. Do you wish the gin block and those things in there? [491]

Q. Is the gin block marked?

A. I haven't put a gin block on it.

Q. You haven't put a gin block on it?

A. No.

Q. Will you do so, please?

A. Yes, I can put one on this.

(Witness does as requested.)

Q. Have you marked the hatch tent gantline?

(Testimony of Sidney Raymond Carlson.)

A. I have.

Q. Have you marked the mast?

A. I have.

Q. Have you marked the side or rail of the ship?

A. No.

(Witness marks.)

Q. Have you described the deck load?

A. Yes.

* * * * *

Q. (By Mr. Howard): Will you state whether or not the hatch tent gantline, in particular the wire strap and block at the upper end of the same, would come in contact with any part of the mast or cross-tree as it is secured for [492] sea at number two hatch in upright position?

A. No, it is made fast in that position to avoid that.

Mr. Howard: I offer in evidence Defendant's Exhibit A-10.

The Court: For what purpose?

Mr. Howard: Illustrative purposes, to illustrate his testimony.

Mr. Poth: I have no objection, your Honor.

The Court: As so limited Defendant's Exhibit A-10 is now admitted.

(Defendant's Exhibit No. A-10 for identification was admitted in evidence.)

Q. (By Mr. Howard): Now, Mr. Carlson, when you don't have a deck load how are the booms at number two hatch secured for sea?

A. They are lowered into—well, not quite a hori-

(Testimony of Sidney Raymond Carlson.)

zontal position, but lowered until they can be reached from the deck. They are lowered down to cradles on top of the forward mast house.

Q. When they are lowered into those cradles what if any portion of the outer upper end of the boom would extend out and beyond the cradle?

A. Well, from the cradle itself to the end would be ten or twelve feet.

Q. What is the length of the wire strap and hatch tent [493] gantline as used on the P & T Adventurer?

A. Well, it varies somewhat, depending on just how the boom is—the gear is set up, but it's made up so that the block hangs approximately a foot below the gin block, so that it clears the gin block.

Q. Well, what would be the range of length of the wire strap?

A. In the vicinity of five feet.

Q. And how is that wire strap on the hatch tent gantline secured when the booms are lowered into the boom rest at the number two hatch preparing to go to sea?

A. Well, the head of the boom hangs out just about to the square of number one hatch, in other words the hatch itself, and ordinarily the gantline itself, the Manila portion of it, is coiled down on the hatch and tied back away onto the cross battens on the hatch to keep them out of the way and in the clear.

Q. Does any part of the wire strap in the hatch tent gantline of the number two boom come into

(Testimony of Sidney Raymond Carlson.)

contact with the boom rest or the collar on the boom rest? A. No.

Q. Does it come in contact with any other portion of the vessel while the booms are secured at sea? A. In the lowered position?

Q. In the lowered position. [494]

A. No, it would be hanging just straight down.

Q. Is there any opportunity for chafing or pinching of the wire in the hatch tent gantlines while the booms are secured for sea in either the upright or the lowered position? A. No.

* * * * *

Q. (By Mr. Howard): Mr. Carlson, what if any procedure did you have on the P & T Adventurer for inspection and maintenance of the hatch tent gantlines during the course of your voyages?

A. Well, usually the gear eastbound is up in the upright position, and unless there's something that we know is definitely in a bad condition there's usually nothing, no maintenance done to it on the eastbound voyage. But then westbound the gear is laid down and each voyage westbound the gear—I have the boatswain, who is my assistant and is in direct charge of the sailors, goes [495] along with me from one end of the ship to the other with a notebook and we note any defects, any chafed rope or blocks, we have a regular—we try to get the blocks overhauled as regularly as possible, and any runners with what we call fishhooks, with broken strands in them, are replaced, and well, the general condition of the gear is checked and any renewals or replacements that

(Testimony of Sidney Raymond Carlson.)

are necessary is done before we get into Los Angeles.

Q. Is there any maintenance that is provided beyond this inspection and checking and replacement?

A. Well, the gear is—the carpenter greases all the moving parts once a trip, and the inspection is made for the purpose of maintenance. What I mean, if any particular guy is in good condition it's not taken down, but if there's a guy that's in bad condition, why it's replaced to make it safe again.

Q. Does the inspection which you refer to include the inspection of the hatch tent gantlines?

A. It includes inspection of all the——

Q. And the wire straps?

A. Everything.

Q. And how frequently would the wire straps and the hatch tent gantlines be inspected, such as were used at number two hatch on this vessel?

A. Well, our round trip voyages are about two months, so at least every two months they are closely inspected.

Q. Now, when you returned to the vessel on July 15th at Olympia did you have occasion to look at the lower part of the wire strap that had been involved in this accident? A. I did.

Q. Where was it located then?

A. It was located in the supercargo's room, a spare room that we have on the ship.

Q. Now will you look at the exhibit before you as A-4 and state whether or not that is the same

(Testimony of Sidney Raymond Carlson.)

piece of gear that you inspected on July 15th when you returned to the ship at Olympia?

A. Yes, that is the piece.

Q. Is that the same block?

A. Yes, I would certainly say it is, sir.

Q. And looking at the wire, is that the same wire?

A. Yes.

Q. Looking particularly at the appearance of the wire, will you state whether or not it appears in the same condition as you observed it when you inspected it at Olympia on July 15th?

A. Yes, because the lawyer and I had the wire out and was looking it over and making remarks about the way the [497] wire had broken.

Mr. Poth: Just a minute. I'll object. That's hearsay.

The Court: I believe the question has been answered.

Q. (By Mr. Howard): What was done with this broken portion of the wire strap after you inspected it at Olympia on July 15th?

A. It was taken with—the lawyer took it with him.

Q. Now will you look carefully at the wire and tell me whether there's any difference in the appearance of the wire now as distinguished from that that you observed on July 15th?

A. None that I can tell.

Q. Now will you look, please, at the pictures again, Mr.—

(Testimony of Sidney Raymond Carlson.)

Mr. Howard: I would like to have also A-2 and A-3 before the witness.

The Court: That may be done.

(The exhibits were placed before the witness.)

Q. (By Mr. Howard): And I'll ask you if the block that you have described in the hatch tent gantline intact at number three starboard boom in Exhibit A-7 is the same type of block as appears in the Exhibit A-4 before you?

A. Yes, it's the same. [498]

Q. Is there any sleeve, bolt or grommet on the hatch tent gantline block that appears in the pictures A-3 and A-7 and also in the other picture A-2 which you have before you? A. No.

Q. Do you use a block with a sleeve, bolt or grommet for hatch tent gantlines on the Pope & Talbot vessels? A. No.

Q. Is there any need to have a bolt, sleeve or grommet on a hatch tent block? A. No.

Q. Gantline block. Mr. Carlson, how many years did you say you've been going to sea?

A. This is my seventeenth year.

Q. From your experience in seventeen years at sea will you state whether or not you would consider it safe for a person to stand under the boom and gear while the operation of winging in or swinging in the boom was taking place? [499]

* * * * *

A. No, I wouldn't say that it's a safe position to be in. Amongst seamen it's the customary prac-

(Testimony of Sidney Raymond Carlson.)

tice to stay out of what we call the bight of the line, or stay away from where the power or pressure is being applied. In other words, if something were to give, why it would go away from you instead of towards you, or if anything were to fall you would be out from under it, so that in any event of something parting or somebody making a mismove, like maybe letting go of a line that shouldn't be let go, why, should the gear involved get away or get out of hand, that there wouldn't be anybody in a position [503] of the possible path of it.

The Court: You may inquire.

Q. (By Mr. Howard): Mr. Carlson, from your experience at sea do seamen or crew members ever have any work—do they ever perform any work on the dock in handling cargo on the dock?

A. No.

Q. Does the dock foreman have any duties to perform aboard the ship?

A. No, no duties in direct connection with the operation of the cargo that I know of.

Q. What other types of workers might be aboard a ship such as the P & T Adventurer during the course of loading and discharging operations?

A. Well, there might be repairmen from shore——

Mr. Poth: I'll object, your Honor, on the ground of relevancy.

The Court: On the question of relevancy have you any statement?

Mr. Howard: Well, your Honor, we believe that

(Testimony of Sidney Raymond Carlson.)

it might be quite relevant under the instructions the Court may give in this case to show that there are various types of shore workers and employees, persons from the shore that may be aboard a vessel during the course of loading and discharging operations, but—— [504]

The Court: The objection is sustained.

Mr. Howard: That's all the questions I have.

The Court: You may inquire on cross examination.

Cross Examination

Q. (By Mr. Poth): When did you start with Pope & Talbot? A. In December of 1950.

Q. 19 what? A. 1950.

Q. And in what capacity did you join your first vessel? A. As Third Mate.

Q. Third Mate? A. Yes.

Q. And how long did it take you to get to be Chief Mate?

A. I got my first Chief Mate's job, let's see, in 19—It would be '55.

Q. Five years it took you to work up to Chief Mate? A. Yes.

Q. What are you now? A. Chief Mate.

Q. That's next to the Captain, is that right?

A. Yes.

Q. Your next step is to be a Master of your own ship? [505] A. Yes.

Q. Do you recall what time you joined the vessel down at Olympia on the 15th of July?

A. I don't recall the exact time, no.

(Testimony of Sidney Raymond Carlson.)

Q. Was the ship working cargo when you got there?

A. No. I came aboard—I was aboard when the cargo gear was rigged.

Q. Pardon?

A. I was there, I came there as they rigged the gear. I was there when they were just starting the operation.

Q. Starting to rig the gear? A. Yes.

Q. Now, where did you first go?

A. Well, I don't recall. I went out on deck, just a general look around the ship. Unless there's something specific that somebody wants I just go out and make a sort of a tour of the deck.

Q. When did you first hear there had been an accident? A. As soon as I came aboard.

Q. And did you go inspect the block at that time? A. Yes.

Q. Do you recall who the supercargo was?

A. I'm not positive, but I do believe—I don't recall having any other than Mr. Tretheway. I believe he was the supercargo. [506]

Q. You mentioned the supercargo's room aboard the vessel. Where was that room?

A. It's a spare room that we have on the — it would be the beat deck on the port side of the vessel in the forward part of the midship house.

Q. And what sort of a room is it?

A. It's just an ordinary—it had been an officer's room when we had—during the war the vessels carried additional officers. I don't recall exactly whose

(Testimony of Sidney Raymond Carlson.)

it was, but there's a bunk and two lockers in the room and we have built a table for the supercargo to put his plans down on, or a desk for him to work from.

Q. And does the supercargo travel with the vessel from Seattle to Olympia? A. No.

Q. Was there a supercargo aboard the vessel when you got down there?

A. I don't know if he was aboard the vessel. If he wasn't aboard the vessel he was out in the dock office probably checking on the lumber lineups and so on.

Q. And how big a room was this?

A. The room I would say is about, oh, eight by twelve.

Q. It has a table in it and it's used as an office, is that right?

A. Yes, just roughly speaking. They just keep the plans in [507] there. Some of them don't even use it for that. On this coast it's more customary in some places to make the plans ashore, but where they wish to come aboard we have that. It's just a piece of plywood built in so they can pin their plan on it.

Q. Who was in the supercargo's room when you went there to see the block?

A. There was no one in the room.

Q. Who took you there?

A. The Second Mate.

Q. Was the room locked up? A. Yes.

Q. Now, I believe you mentioned that this pen-

(Testimony of Sidney Raymond Carlson.)

nant, this portion of this pennant that you saw hanging from the boom at the number two hold stayed up there as long as you were on the ship; is that right? A. That's correct.

Q. The strand stayed there?

A. Yes, the eye and the remaining strands.

Q. And I believe you also testified that you never did get a close look at it; is that right?

A. Not right up so that I could touch it, no.

Q. Well, after the booms had finished working cargo at Olympia did you go to sea?

A. Yes, I believe we did finish the cargo in Olympia. [508]

Q. What position did you put the booms in?

A. In the upright position.

Q. You raised them up in the air?

A. Yes.

Q. Now, it's a simple job to raise or lower a boom, isn't it? A. Relatively so, yes.

Q. I believe you mentioned that you inspect these tent gantline straps—they are also called pennants, are they not? A. They can be, yes.

Q. That wire on there is also called a pennant?

A. Yes.

Q. I believe you stated that you inspect them every two months; is that right?

A. Definitely every two months they are closely inspected, but if we are working on some other gear, why I think more through habit than anything I always look at all the gear.

Q. When did you leave the vessel? You men-

(Testimony of Sidney Raymond Carlson.)

tioned you left it in September. What date was that?

A. I don't recall the exact date. I was transferred to another vessel.

Q. Well, you knew that that pennant up there was broken, did you not? [509] A. Yes.

Q. And the accident happened on July 15th and you left the vessel in September? A. Yes.

Q. And it hadn't been inspected or repaired, had it?

A. No, because during the—we never use gantlines on the east coast and the only place that we would have any use for a gantline again would be when we got up into the Northwest, so that I wasn't concerned with it because when we come——

Q. Doesn't it ever rain in New York?

A. Yes, but they won't work cargo when it rains.

Q. There are no tents used in New York?

A. They've never been on any vessel that I've been on. We don't load in New York and it's only lumber that we have in the ship when we get there, so it doesn't make any difference if it does get wet.

Q. You bring cargo from the east coast, do you not? A. Yes.

Q. General cargo? A. Yes.

Q. Where do you load that cargo?

A. Starting in Philadelphia.

Q. Doesn't it ever rain in Philadelphia?

A. Yes. [510]

Q. Do you use tents there when you're loading general cargo?

(Testimony of Sidney Raymond Carlson.)

A. No, because if it starts to rain the stevedores cover up and quit.

Q. Where else do you load cargo?

A. In Baltimore.

Q. And they don't work when it rains there?

A. No, sir.

Q. Do they work any place but in Seattle when it rains?

A. On the Columbia River or in San Francisco.

Q. It's just out here that they work ships when it rains?

A. When it rains hard enough to be of any consequence so that the stevedores would get wet, why on the east coast they all quit.

Q. Do they do that in Philadelphia also?

A. Yes, sir.

Q. And Baltimore? A. Yes, sir.

Q. What about the Gulf?

A. We don't stop in the Gulf, sir.

Q. So everywhere on the east coast is it that the longshoremen refuse to work, or is it that you just shut down operations?

A. Well, the stevedores won't work in the rain. They have that, I guess, in their agreement or in their working rules that they won't work in the rain. [511]

Q. What about when it snows?

A. If it snows heavily they quit then, too.

Q. Well, now, when you came back there that morning or that day, the 15th, and you saw that broken pennant up there, you didn't lower the

(Testimony of Sidney Raymond Carlson.)

boom down to take it off, did you? A. No, sir.

Q. That easily could have been done, could it have not?

A. It could have been done but it would have meant stopping the stevedore operations, and that could prove quite costly.

Q. Well, your crew raised the boom up, did they not, when you went to sea? A. Yes.

Q. Why couldn't they have lowered the boom down at the same time and taken that piece of strap off of there?

A. Because the lumber in the deck load was so high that the lower part of the boom would have hit the lumber and damaged the boom. It couldn't have been——

Q. How long were you in Olympia?

A. I think about a week.

Q. Did you put a deck load on?

A. Yes.

Q. How high a deck load did you put on?

A. I don't recall exactly, but the average deck load is [512] around ten feet.

Mr. Poth: May I have the log book, please?

The Court: That will be done.

(Defendant's Exhibit No. A-1 was handed to Mr. Poth.)

Q. (By Mr. Poth): Where did you leave the ship in September?

A. In Port Newark, New Jersey.

Q. Was that the last port of call?

(Testimony of Sidney Raymond Carlson.)

A. No, I believe she had—no, she had more lumber in her yet, I believe.

Q. Down in the hold? A. Yes, sir.

Q. But the deck load was all gone? A. Yes.

Q. Well, when her deck load was all gone why didn't you lower the boom down and take that piece of strap off?

A. Because I was told that—all I was told about the strap—

Q. I'll object to what you were told. I'm just saying you didn't do it, did you?

A. No, because there was no necessity—I didn't see no necessity of it.

Q. Well, it was a part of the ship's gear that needed replacing, wasn't it?

A. But it didn't need replacing then. [513]

Q. Well, didn't you feel that it was a valuable piece of evidence?

A. I was told that it was.

Q. That piece was—you were told that it was a valuable piece of evidence? A. Yes.

Q. Well, do you know whatever became of it?

A. I do not.

Q. You don't see it around here, do you?

A. No, not the remaining piece.

Mr. Poth: I believe I just—

The Court: You may have a moment.

(Brief pause.)

Q. (By Mr. Poth): Isn't it true that long-shoremen, particularly hatch tenders and winch

(Testimony of Sidney Raymond Carlson.)

drivers, constantly work under the gear, as you call it? A. Yes, when the gear is set.

Q. And is it normal to expect that a tent gant-line block will fall down on you if you're standing under the gear? A. No, not specifically. [514]

* * * * *

The Court: Does the defendant rest?

Mr. Howard: The defendant rests.

The Court: Any rebuttal by the plaintiff?

Mr. Poth: The plaintiff has no rebuttal, your Honor.

The Court: Does the plaintiff rest?

Mr. Poth: The plaintiff rests. [523]

* * * * *

(The following proceedings were had in the absence of the jury:)

Mr. Howard: May I take up one matter briefly in the absence of the jury, your Honor?

The Court: You may proceed.

Mr. Howard: At the close of all of the evidence defendant moves under Federal Rule of Civil Procedure 50 for a directed verdict against the plaintiff and in favor of the defendant Pope & Talbot, Inc., upon the following specific grounds:

1. That all of such evidence introduced in this case fails to show that plaintiff is entitled to relief from the defendant on the ground of unseaworthiness. [524]

2. That all such evidence fails to show that plaintiff is entitled to relief against defendant on

the basis of negligence or negligent failure to perform any duty owing from defendant to plaintiff.

3. That all such evidence fails to show any unseaworthiness of the vessel or negligence of defendant on the basis of which plaintiff would be entitled to recover against defendant.

Your Honor heard rather extensive argument on these same points at the close of plaintiff's case and I don't intend to go over the same ground again.

The Court: And the Court is now additionally benefited by the discussions between the trial judge informally made between the trial judge and Counsel yesterday afternoon.

Mr. Howard: Yes, your Honor.

The Court: The challenge is overruled and the motions and each and all of them are denied. Does that respond accurately to your statement of the legal questions on the record, Mr. Howard?

Mr. Howard: On the record I would like to make this additional motion, if the Court please.

The Court: You may do so.

Mr. Howard: Defendant moves first to withdraw from the consideration of the jury any issues as to [525] liability based on unseaworthiness on the ground and for the reason that the plaintiff is not within the class of workers which the Supreme Court and the Ninth Circuit Court have held is entitled to recover from a shipowner on the doctrine of unseaworthiness.

The Court: The motion is denied, because the Court believes that under the evidence in this case the Court should submit the case to the jury, especially with the aid which Counsel desire to give to the Court respecting proper instructions which should and the Court expects will be given on this question of seaworthiness and on the questions and reasons on such allied phases of the subject as will embrace a proper dealing with the reasons stated by movant at this time.

Mr. Howard: Finally, defendant moves to withdraw from the consideration of the jury any issue as to liability based on a charge of negligence on the ground and for the reason that defendant contends that there is absolutely no evidence in this case of negligence of the defendant. [526]

* * * * *

The Court: The motion stated by Mr. Howard is denied, the one last made by him and relating to the subject of negligence.

Mr. Howard: May the record show exceptions to the Court's ruling on each motion?

The Court: The record will show exceptions to the Court's ruling as to each and all of these motions and challenges stated by Mr. Howard for the defendant since both sides rested and all of the evidence was closed in this case, and in so far as it was the statement of an objection the objection is overruled. The exception is noted in the record effectively.

Now does the plaintiff wish to make a further statement?

Mr. Poth: Yes. Also in accordance with Rule 50 we wish to move for a directed verdict on the ground of the unseaworthiness of the vessel and on the negligence either of the officers of the crew of the vessel or other personnel aboard the vessel, mainly because the plaintiff has made a prima facie case which has in no way been rebutted by any reasonable inference to be [528] derived from evidence adduced in this cause on behalf of the defendant.

The Court: The motion is denied. Is there anything else to come before the Court? (No response.)

* * * * * [529]

(Thereupon, oral argument was presented to the Court and jury by Mr. Poth in behalf of plaintiff and by Mr. Howard in behalf of defendant.) [530]

* * * * *

The Court: Members of the jury, you have heard the testimony and received the evidence and you have heard the arguments of Counsel. After the Court instructs you, you will retire to the jury room to consider your verdict.

In this case, the parties have agreed to the following admitted facts, and you will accept them as true without proof, namely:

I.

That the plaintiff, Jack V. Cordray, age 36 at the time of the accident, is now, and at all times herein mentioned, has been a resident of Seattle,

King County, State of Washington, that place being within the territorial jurisdiction of this Court.

II.

That the defendant, Pope & Talbot, Inc., a corporation, is a foreign corporation, incorporated under the laws of the State of California, with its principal place of business in San Francisco, California; that at all times herein pertinent, said defendant was doing business, and had a place of business, in Seattle, King County, State of Washington, and was the owner and operator of the steamship P & T Adventurer, said vessel being employed as a merchant vessel on the navigable waters of Puget Sound, and elsewhere. [533]

III.

That there exists a diversity of citizenship between the plaintiff and the defendant, and the venue of this action is properly in this Court.

IV.

That prior to the 15th day of July, 1956, the defendant entered into a contract with Seattle Stevedore Co., said company agreeing to act, and acting at all times mentioned in this complaint as an independent contractor, having complete control and supervision of all operations pertaining to the discharge of cargo from the holds of defendant's said vessel to the ship's side at Pier 48, in the Port of Seattle, in the navigable waters of Puget Sound, on the said 15th day of July, 1956.

V.

That prior to the 15th day of July, 1956, on which date plaintiff was engaged in the moving of cargo from ship's side to place of rest on dock or railway car, the defendant entered into an agreement with Olympic Steamship Co., Inc., to, in the course of its own public dock business and not as the appointed agent of Pope & Talbot, or Seattle Stevedore Co., receive, at ship's side at said Olympic Steamship Co.'s dock at Pier 48, and to stow in the warehouse on, and in railroad [534] cars on spur tracks at, said dock, the cargo of the P & T Adventurer, upon compensation for work done before the cargo comes to rest where stowed on the dock or loaded on railroad cars payable by Pope & Talbot to said Olympic Steamship Co.

VI.

'That in pursuance of its aforesaid handling of the said ship's cargo, Olympic Steamship Co., Inc., employed the plaintiff, Jack V. Cordray, as a foreman over other shoreside workmen, employed by it handling said cargo on its said Pier 48.

VII.

That at all times pertinent herein, plaintiff was so employed.

VIII.

That plaintiff has elected to recover damages against a third person, other than his employer, and that third person is the defendant, which action as to suing a third person is permitted under the

law under the circumstances which are involved here, and all of the required conditions to be performed by the plaintiff in making such election as the law provides have been faithfully and fully performed by the plaintiff.

IX.

That the plaintiff, Jack V. Cordray, was [535] injured while on the deck of the S.S. P & T Adventurer, in the vicinity of No. 2 hatch during the early morning of July 15, 1956.

X.

That following the accident, the plaintiff was hospitalized and has undergone medical treatment and has incurred expense for hospitals and doctors; that prior to the accident which occurred on July 15, 1956, he had been involved in another industrial accident causing injury to his back for which he underwent surgery by Dr. D. G. Leavitt for repair of a herniated, which means ruptured, disc in the region of the lower back.

XI.

That the S.S. P & T Adventurer was in navigable waters within the Western District of Washington at the time of the occurrences alleged in this action, and this Court has jurisdiction of the subject matter and the parties to the action.

The foregoing facts are agreed to by the parties, but each party expressly reserves the right to present at this trial of the plaintiff's action against

the defendant, evidence on said facts and other pertinent or subsidiary facts during this trial in this Court before this Court and jury. [536]

In addition to those admitted facts, the pleadings of the parties,—that is, the plaintiff and the defendant,—in effect set forth the following further contentions and issues in this case:

The plaintiff alleges in his complaint that on or about the 15th day of July, 1956, at about the hour of 4:45 o'clock a.m., the plaintiff while in the course of his employment and in the carrying out of the duties of his said employment was obliged to traverse the weather-deck of said vessel, the P & T Adventurer, while it was moored in the navigable waters of the Port of Seattle, alongside Pier 48 in said harbor; that while plaintiff was in the vicinity of the No. 2 hatch on said deck, the pennant or strap on the gantline block on the starboard boom of said No. 2 hatch suddenly parted and caused said pennant and gantline block to fall and violently strike and injure the plaintiff.

In its answer, the defendant admits that plaintiff was injured on or about the date and time mentioned when a gantline block of said vessel struck and injured plaintiff, but except as so admitted the defendant does deny each and every other allegation, matter and thing contained in this part of plaintiff's complaint.

The plaintiff also alleges in his amended [537] complaint that the proximate cause of plaintiff's injuries and damages were the unseaworthiness of said vessel with respect to said pennant and gant-

line block, the negligence of the officers and personnel aboard said vessel, and the breach of defendant's nondelegable duty to safeguard plaintiff as a business guest and invitee aboard said vessel from injury by negligent acts, all of which unseaworthiness and negligence and such alleged status of plaintiff the defendant denies.

The plaintiff further alleges that as a proximate result of the unseaworthiness of said vessel and said negligence, plaintiff was struck with great force and violence and sustained severe and permanent injuries to his head and neck; that he sustained a severe nervous shock, pain and mental suffering; that plaintiff has been obliged to incur liability by reason of said injuries for hospitalization, medical care and treatment; that plaintiff has lost wages, and will continue to lose wages for a long time to come solely by reason of said injuries; that by reason of the foregoing, plaintiff alleges he has been damaged in the sum of \$75,000.00, for which sum plaintiff prays for judgment against the defendant together with his costs and disbursements herein to be taxed by the Court and not by the jury. That is, in that respect costs [538] are referred to, not the total overall aggregate recovery. The jury fixes, if it awards a verdict to the plaintiff, the amount of his recovery in the general relief and in the special relief mentioned except the taxable costs, which taxable costs are always in every instance determined, fixed and entered by the Court without the jury's help on that particular detail.

For further answer and by way of a first affirmative defense the defendant alleges in substance and effect as follows:

That if plaintiff was injured and/or damaged as alleged in plaintiff's complaint and amended complaint, all of said injuries and/or damages were proximately caused and contributed to by the negligence of the plaintiff himself by voluntarily placing himself or remaining in a dangerous position, in failing or omitting to take reasonable precautions for his own safety, and, having fully answered plaintiff's complaint, the defendant prays that the complaint be dismissed with prejudice and that defendant have and recover its costs and disbursements herein to be taxed by the Court and not by the jury.

This is a civil case and the party alleging in his pleadings any material fact which is not admitted by the opposing party has the burden of proof to establish [539] such fact, which must be done by a preponderance of the evidence.

The basis of this action is unseaworthiness and negligence. The plaintiff is not entitled to recover merely because there was an accident. In order to recover, the plaintiff must prove by a preponderance of the evidence that the vessel was unseaworthy as alleged or that the defendant was negligent in one or more particulars, as alleged in plaintiff's complaint, and that he sustained injuries and damages as alleged and that such unseaworthiness or negligence was the proximate cause of such injuries and damages.

Negligence is the failure to exercise reasonable and ordinary care. By the term "reasonable and ordinary care" is meant that degree of care which an ordinarily careful and prudent person would exercise under the same or similar circumstances and conditions. Negligence consists in the doing of some act which a reasonably prudent person would not do under the same or similar circumstances, or in the failure to do something which a reasonable prudent person would have done under the same or similar circumstances and conditions. Negligence is not to be presumed, but must be established by proof the same as any other fact in the case.

The term "proximate cause" means an [540] efficient cause of an injury or loss without which such injury or loss would not have been sustained. It is that cause which in direct, unbroken sequence produces or directly contributes to producing the injury or loss complained of, and without which cause the injury or loss would not have occurred.

By the term "burden of proof" is meant the obligation to prove or establish a fact by a preponderance of the evidence.

By the term "preponderance of the evidence" or "fair preponderance of the evidence" is meant that evidence on a particular matter which, when fully, fairly and impartially considered by you, has the greater weight with you, produces a stronger impression and is more convincing to you as to its truth than that to which it is opposed; and such preponderance of the evidence is not necessarily determined by the greater number of witnesses who

may have testified for the one party or the other regarding such matter, since you may take into consideration all of the evidence in the case, no matter by which side produced.

Unseaworthiness, as used in this case and throughout the evidence and throughout this Court's instructions, exists whenever the vessel itself or its cargo, appliances, appurtenances or equipment are not [541] reasonably safe and adequate for the purposes reasonably intended.

In its answer the defendant charges that the plaintiff was guilty of contributory negligence. "Contributory negligence" means negligence or want of care on the part of the person suffering injury or damage which materially and proximately contributed to cause the injuries complained of. It also may consist in doing some act which a reasonably prudent person would not have done under the same or similar circumstances or conditions, or in failing to do something which a reasonably prudent person would have done under the same or similar circumstances. It is never presumed, but must be established by proof when, as in this case, it is denied. The burden of such proof as to contributory negligence in this case is on the defendant.

By the admiralty law, which relates to ocean shipping activities and incidents connected therewith, the owner of a vessel is liable to indemnify a cargo unloading longshoreman and his foreman for injuries and damages proximately caused by the unseaworthiness of the vessel or its appurtenant ap-

pliances and equipment. It is immaterial whether the shipowner knows of the dangerous and unseaworthy condition, because the shipowner owes the longshoreman a continuous duty to provide [542] him a safe place in which to work. This duty cannot be delegated to anyone else.

Under the admiralty law, which applies in this case, a longshoreman or his foreman assigned in unloading cargo from a ship does not assume the risk of an unsafe, improper and unseaworthy place to work. The shipowner is under a continuing, non-delegable duty to keep the ship and its appliances seaworthy, safe and in proper condition.

Recovery on the ground of unseaworthiness is limited to seamen and others such as longshoremen performing work for the ship such as discharging cargo which historically and until recent times was done by members of the ship's crew.

It was the duty of the defendant under its shipping contract with shippers to unload their cargo from the ship and store it on the floor within the warehouse on the dock. To perform that duty, defendant made cargo discharge arrangements resulting in two independent contractors using their employees in such cargo work. One of such contractors, Seattle Stevedore Co., through its employees unloaded the cargo from ship's hold onto the outside dock platform under ship's tackle, and the other such contractor, Olympic Steamship Co., moved the cargo onward from that place to a [543] place of rest on the dock floor inside the dock warehouse.

The employees of each of such contractors in their work had the right to use defendant's unloading gear and equipment and to go upon such places under defendant's control as were reasonably necessary in the performance by such contractors' employees of their work of discharging said cargo from vessel hold to point of rest on the dock floor within the dock warehouse.

In order for the plaintiff to recover, you must in any event find from a preponderance of the evidence that the plaintiff was at the time of the accident in a place aboard the vessel where it was reasonably necessary for him to be in the performance of his duties as foreman of the dock-working longshoremen assisting on the dock in the discharge of the vessel's cargo.

If you do not so find, plaintiff would be in a status similar to that of a person without any employment connection with the unloading work at hand, and in that event plaintiff would not be entitled to recover in this case.

Under the law the mere fact that the plaintiff in this case has sued the defendant is not to be taken by you as any evidence whatsoever of plaintiff's right to recover from the defendant. You cannot find for the [544] plaintiff in this case from the mere fact that you find he had an accident or received an injury while on board the vessel, nor does it raise any inference that the vessel was in any respect unseaworthy or that the defendant was negligent.

While the party alleging any fact not admitted by the opposite party has the burden of establishing such fact by a preponderance of the evidence, it is not essential that it be established by evidence introduced by the party having such burden of proof, but it may be established in whole or in part by evidence introduced by the opposite party.

As to plaintiff's allegations of unseaworthiness of the vessel, you are instructed that a vessel is seaworthy when, respecting the vessel itself, its appliances, appurtenances, cargo and cargo storage, it is reasonably fit for the voyage and the work for which the vessel is to be applied.

The standard of seaworthiness is not perfection, but reasonable fitness.

A vessel is unseaworthy when any of its integral appurtenances, appliances or equipment are not reasonably safe for the uses which the vessel's owner should reasonably expect will be made of such appurtenances and appliances. [545]

Seaworthiness is a question of fact only and it is not dependant upon a showing of negligence on the part of the vessel owner. Where an integral portion of a vessel, its appliances, appurtenances and equipment is insufficient for its intended use and such use proximately results in injury, the owner is liable for such injury even though the defect rendering the appliance unseaworthy and insufficient was a latent defect.

If you find that the P & T Adventurer was unseaworthy before and at the time of the accident and that the plaintiff was injured or damaged as

a proximate result thereof, then I instruct you that in order for plaintiff to recover it is not necessary that he prove that the shipowner or operator had notice or knowledge of such unseaworthy condition or the means of obtaining it.

Upon consideration of all the evidence in this case, if it remains doubtful in your minds whether the injuries complained of resulted from the specific unseaworthiness as charged by plaintiff against the defendant, or from some other cause, then the plaintiff cannot recover for unseaworthiness.

The burden is on plaintiff to prove by a fair preponderance of the evidence that the defendant's ship [546] P & T Adventurer was unseaworthy as alleged and that as a proximate result of such unseaworthiness plaintiff sustained damages as alleged in his complaint.

Respecting negligence, the burden is upon the plaintiff in this case to establish by a fair preponderance of the evidence two things: (1) that such defendant Pope & Talbot Co., Inc., was negligent in one or more of the particulars as alleged in the plaintiff's complaint; and (2) that such defendant's negligence, if any, was the proximate cause of any injury or damage, if any, which such plaintiff may have sustained. Should the plaintiff satisfy you by a fair preponderance of the evidence on these two points, he is entitled to recover against the defendant. If he does not so satisfy you, he is not entitled to recover for negligence.

In order that a plaintiff may recover for personal injuries and damages for negligence in an

action such as this it is not necessary that he shall have proven each and all of the specifications of negligence which he alleges. It is sufficient if he has proven one alleged material specification of negligence on the part of the defendant, its agents or employees, and if you find from a preponderance of the evidence that such negligence proximately caused the accident and injuries complained of by plaintiff. [547]

As to negligence, you are instructed that a shipowner is not bound to furnish the very latest or most improved working conditions and appliances, but if the shipowner furnishes such working conditions and appliances as are reasonably safe and suitable and uses reasonable care in maintaining them in a safe condition, thereby the shipowner discharges that duty under the law.

As to liability for negligence, a shipowner is not an insurer of the safety of longshoremen and seamen employed on its vessels, and as to negligence liability the law recognizes that absolute safety is unattainable and that in carrying on ordinary work there is no such thing as absolute safety. In connection with such negligence liability, shipowners are liable only for the result of their negligence, and they are not liable for the normal risks or dangers necessarily connected with the services or employment.

You are instructed that a shipowner is not bound to furnish the very latest or most improved working conditions and appliances, but if the shipowner furnishes such working conditions and appliances

as are reasonably safe and suitable and uses reasonable care in maintaining them, thereby he discharges his duty in that respect.

The duty of abstaining from causing injury to another through unseaworthiness or negligence applies [548] where the one injured has a previously existing bodily injury, disease, infirmity or abnormality, and when this duty is violated, damages proximately resulting therefrom may be awarded for the injury done even though the extent of the injury might not have resulted but for the previously existing physical condition of the person injured, or even though the injury sustained was only an aggravation of the pre-existing condition.

There can be no recovery by plaintiff for the effects of his pre-existing condition which are not the direct and proximate result of the defendant's alleged negligence or said unseaworthiness. Plaintiff, if you find that he is entitled to recover, can only recover for such injuries, if any, as were directly and proximately caused by the accident here in question.

The defendant corporation can act only through its agents and employees and is responsible for the acts and omissions of such agents and employees within the scope of their authority.

The negligence, if any, of the defendant's employees other than the plaintiff is to be considered by you as the negligence of the defendant.

You are instructed that a plaintiff may not cast the burden of his own protection upon another. He owes this duty to himself. The law does not permit

him [549] to close his eyes to risk or danger and then, if he is injured as the result of such risk or danger, to be excused from the consequences of his own act or omission. He must use his own intelligence and faculties for his own protection.

The law requires a person claiming damages as compensation for injury to do everything possible to mitigate that injury and the resultant damage. To mitigate means to lessen or make less severe.

Therefore, even if you find for the plaintiff and find that he has suffered some damage for which you find the defendant liable, in arriving at the amount of your verdict you should consider whether the plaintiff has done those things which a reasonable and prudent man would do under the same or similar circumstances to either lessen the injury or avoid aggravation of it.

If you find the plaintiff has not acted reasonably and prudently in mitigating his injury, you shall decrease your verdict, if any you award him, to an amount which would compensate him only for what his injuries would be if he had acted prudently.

The measure of damages for impairment of earning capacity is the difference between the amount plaintiff was capable of earning before his injury and that which he is capable of earning thereafter.

In an action for damages and lost wages, a person if able to work must take reasonable steps to obtain and perform some kind of available and suitable re-employment.

It is the duty of the Court to instruct you as to the measure of damages in case you find a verdict

for the plaintiff. By the giving of this instruction the Court does not mean to suggest to you what your verdict should be or for which party it should be rendered.

If your verdict is in favor of the plaintiff, then you will from a preponderance of the evidence assess the amount of his recovery, and you should in that event allow such sum as so shown will fairly and justly compensate plaintiff for the damages, if any, sustained arising out of the accident and proximately caused by the negligence of the defendant and/or the unseaworthiness of its vessel. You should take into consideration the nature, character and extent of plaintiff's injury, if any you so find, the pain and suffering, if any, you so find he had endured or will endure in the future, together with any permanent disability, if any, which you find has been established by a preponderance of the evidence.

Your award should include compensation for such medical and hospital expenses, if any, as you so find [551] have been reasonably and necessarily incurred by plaintiff in the past and any such expense, if any, which you so find will with reasonable certainty be so required in the future. You should likewise consider any loss of earnings by plaintiff sustained and any impairment, if any, of his earning ability which you so find is established by the evidence.

You should not indulge in speculation or conjecture, but may award compensation only for such

injuries and damages as are shown by a fair preponderance of the evidence to have been sustained or are reasonably certain to be sustained in the future.

The law has not furnished us with any fixed standards by which to measure pain, suffering or disability. With reference to these matters, you must be governed by your own experience and judgment based upon the evidence in this case and in the light of the Court's instructions.

As I have already instructed you, the defendant has pleaded that if the plaintiff was injured, his injuries were caused and contributed to by his own careless and negligent acts. As already in greater detail stated in these instructions, contributory negligence is defined in law as negligence on the part of the plaintiff which contributed directly or proximately to his own [552] injury or damage. In some cases contributory negligence on the plaintiff's part defeats his recovery entirely without regard to the question whether such negligence was greater or less in degree than the negligence of the defendant. This case, however, is governed by the maritime law, under which the fact that the injured party may have been guilty of contributory negligence does not bar a recovery unless, respecting liability for negligence, the injuries were caused solely by plaintiff's own or a third party's negligence. When his own negligence merely concurs with that of the defendant, it merely operates to diminish the amount of his recovery in proportion to the extent

to which his own negligence contributed to his injury.

Applying these rules to this case, if you find that the plaintiff's injuries or damage, if any, were caused solely by his own negligence, then your verdict will be for the defendant. If you find that plaintiff's injuries or damages, if any, were caused solely by said unseaworthiness of the vessel or solely by the negligence of the defendant, then your verdict will be for the plaintiff, provided you find under all these instructions that plaintiff is entitled to recover, and in that event you will assess his damages at the full amount which you may find is necessary to compensate him for his injuries [553] or damage, as I have already instructed you upon that subject.

If you find that plaintiff was injured solely by a third party and not by said ship's unseaworthiness or defendant's negligence, then your verdict shall be for the defendant. If, however, you find that both the plaintiff and the defendant were negligent, or that said unseaworthiness existed as alleged and that the negligence of both the plaintiff and the defendant respecting such negligence liability contributed to cause the plaintiff's injuries, or such unseaworthiness of the vessel caused such injuries and/or damages, then your verdict will still be for the plaintiff and against the defendant, but in assessing plaintiff's damages you will diminish the amount awarded him in the proportion in which you find that his own negligence contributed to his injuries or damage, if any.

The fact that the Court has instructed you upon the rules governing the measure of damages in this case is not to be taken by you as an indication on the part of the Court that it believes or does not believe that the plaintiff is or is not entitled to recover damages. Such instruction is given to you to guide you in arriving at the amount of your verdict only in the event that you find from the evidence and under these [554] instructions given you by the Court that the plaintiff is entitled to recover damages. If from the evidence and under the instructions given you by the Court you find that the plaintiff is not entitled to recover, then you are to entirely disregard these instructions which have been given you concerning the measure of damages.

The rules of evidence ordinarily do not permit the opinion of a witness to be received in evidence. An exception to those rules exists in the case of expert witnesses. A person who by education, study and experience has become an expert in any art, science, profession or occupation, and who is called as a witness, may give his opinion as to any such matter in which he is versed and which is material to the case. You will consider such expert opinion as may have been given in this case and you should weigh the reasons, if any, given for it. You are not bound, however, by any such expert witness opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it if in your judgment the reasons given for it are unsound.

You are the sole and exclusive judges of the evi-

dence and of the credibility of the several witnesses and of the weight to be attached to the testimony of each. In weighing the testimony of a witness, you have a right [555] to consider his demeanor upon the witness stand, the apparent fairness or lack of fairness, the apparent candor or lack of candor of such witness, the reasonableness or unreasonableness of the story such witness relates, and the interest, if any, you may believe a witness feels in the result of the trial, and any other fact or circumstance arising from the evidence which appeals to your judgment as in any wise affecting the credibility of such witness, and to give to the testimony of the several witnesses just such degree of weight as in your judgment it is entitled to.

You will be slow to believe that any witness has testified falsely in the case, but if you do believe that any witness has wilfully testified falsely to any material matter, then you are at liberty to disregard the testimony of such witness entirely, except in so far as the same may be corroborated by other credible evidence in the case.

The plaintiff having testified as a witness, the foregoing relating to credibility of witnesses and weight of testimony applies to him and his testimony, as well as to all the other witnesses in the case.

It is the duty of the Court to instruct you as to the law governing the case, and you must take such instructions to be the law. You will consider such [556] instructions as a whole and will not select any one of them and place undue emphasis on that

one instruction. If the Court has repeated or emphasized more than another any instruction in whole or in part or has seemed to the jury to have done so, you will disregard as unintended and without effect any such repetition or emphasis by the Court.

You will consider all evidence admitted by the Court and now before you, and you will disregard all evidence and exhibits offered but not admitted by the Court, and all evidence stricken by the Court, and further you will consider only in the manner limited any evidence which was received for a limited purpose, in accordance with the statement of Counsel and the Court at the time of its admission when statements were made regarding such limitations upon the purpose and scope of the evidence so admitted.

In this connection you are instructed that you are not called upon to pass upon objections and exceptions made or taken by Counsel, and you should not allow the making of objections and the taking of exceptions by Counsel to influence or confuse you.

It is your duty to weigh the evidence calmly and dispassionately, to regard the interests of the parties to this action as the interests of strangers, to decide [557] the issues upon the merits and to arrive at your conclusion without any consideration of the financial ability of the one or the necessities of the other, and without regard to what effect, if any, your verdict may have upon the future welfare of the parties.

Statements, if any, by Counsel or the Court, un-

supported by your own recollection of the evidence, you will disregard.

You shall not permit sympathy or prejudice in favor of or against either party or their respective attorneys to have any place in your deliberations, for all persons are equal before the law and all are entitled to exact justice.

While it would be proper for me as the trial judge to analyze the testimony and to give you my understanding of it, which, however, would not be binding upon you, my purpose is not to intimate to you any opinion I may have of any fact or the weight of any evidence, and if I refer or have referred to any facts in the case, it will not be and has not been for the purpose of indicating to the jury any opinion I may have of the facts, but simply to illustrate some proposition of law which is involved with the facts.

After you retire to the jury room to consider your verdict, if you can conscientiously do so, you are [558] expected to agree upon a verdict in this case. The matter being submitted to you for your consideration is an important and serious one, as are all cases submitted to juries. You should bring to your consideration of this case your earnest and honest endeavor to solve it justly and properly with due regard to the rights of both the plaintiff and the defendant.

Let me say to you that after you retire to the jury room to consider your verdict you should then freely consult with one another regarding the views on the evidence of each and all of you. If any one

of you should be convinced that your view of the case is erroneous, do not be stubborn, and do not hesitate to abandon your own view under such circumstances. On the other hand, it is entirely proper to adhere to your own view, if after a full exchange of ideas with your fellow jurors, you still believe you are right.

You are not permitted to resort to lot or chance in determining your verdict, nor are you permitted to use the so-called pooling or quotient plan or scheme. Such scheme is for each juror to write down the amount he thinks should be awarded, then to add up those amounts and divide that sum by twelve and thus fix the amount of your verdict, in case it is for the plaintiff. Do not do that, as that would be illegal and would not be a valid [559] verdict, for your verdict should be based upon the evidence and the law as given to you by the Court, and not upon such or any chance or scheme.

I might add this further thought to the jurors, by way of an explanation of the present status of this case, or the trial of it. Counsel in the case have worked industriously and earnestly to bring before the Court and jury the evidence in the case. The Court has fully instructed the jury on the law applicable to it. It is not known to the trial judge what more could be done to properly enable this jury to perform its duty.

You now have all of the means necessary to a decision of this case. In this court the instructions in written form are not sent to the jury room. Also written transcripts of the testimony orally stated

from the witness stand are not sent to the jury room and will not be in this case. It is for the jury to remember the evidence and the Court's instructions.

Immediately upon your retiring to the jury room to consider your verdict you will select one of your number as your foreman, who will speak for you in court and announce your verdict.

The pleadings in the case and the orders and other files will not be sent to the jury room, as the issues in this case are simple and have been sufficiently [560] explained in the statements at the outset of the trial by Counsel and by the evidence which is now all in before the Court and jury and in the thorough arguments of Counsel.

You will take with you to the jury room the admitted exhibits in the case, and you will be given for your use in the jury room two forms of verdict. One of such forms is in case you find for the plaintiff. The other of such forms is for your use in case you find for the defendant. Both of the forms have been prepared by the Clerk of this court for the convenience of the jury and are in the usual form which other juries have used in similar situations so far as the form is concerned. It remains, however, for you to complete the form by the necessary insertion of needed words and figures in some cases, upon the condition that you find for the plaintiff in particular, and in this case either verdict form by your proper use of it and proper filling in of the particular form desired by you in order to express the jury's verdict, whatever it is, is intended for and is sufficient to meet any eventuality which may

arise in this specific case, and when the blank spaces intended to be filled in are properly filled in, no matter which verdict you use, if it is the verdict form which you intend by filling in the blanks clearly indicated to be filled in the verdict [561] will become the true and lawful verdict when signed by the foreman and so filled in in this particular case.

When you reach your verdict, if the same is for the plaintiff, you will in that event fill in the amount of recovery you allow plaintiff and have your foreman sign that verdict. There are two blank spaces in that plaintiff's form of verdict which you will have to fill in so far as expressing the amount of the verdict is concerned if the plaintiff's form of verdict is to be used by the jury to express its verdict found by them. The long blank line is for the use of the written words which are needed to express in words the amount of the verdict. The shorter blank line beneath that one is for the purpose of filling in there only figures, Arabic figures, which in figures express the same amount of the verdict. So that there will be as a result of the proper use of this verdict form two different kinds of expression of the same thing; namely, the amount of the verdict, and one of those expressions will be in written words and the other expression will be in Arabic figures such as we use, both meaning the same thing as to the amount of recovery, if any recovery is allowed.

If you find a verdict for the defendant, you will in that event use the appropriate form provided

therefor, which is quite obvious and clearly stated, and [562] have your foreman sign that verdict form.

You will discard the form of verdict not used by you.

It is necessary that all twelve of you agree upon your verdict, for the verdict of any lesser number of you than the unanimous verdict of all twelve of you is not a legal verdict in this, the United States District Court. Your verdict must be, if it is a lawful verdict, and no matter for which litigant it is, a unanimous verdict of each one and all twelve of you.

Counsel, have I overlooked any clerical or similar matter? (No response.)

As provided by law and the usual practice in cases like this, if there are any exceptions to be noted by Counsel to the giving of any instructions or the failure to give any requested instructions, I shall, upon being so notified, temporarily excuse the jury for that purpose.

Does the plaintiff have any such exceptions?

Mr. Poth: No, your Honor.

The Court: Does the defendant have any such exceptions?

Mr. Howard: Yes, your Honor.

The Court: As I have just stated, this is another procedure which must under the law be taken in [563] the absence of the jury. It is a usual one, and there is nothing extraordinary or unusual about it. The case is not yet submitted to you for your consideration or verdict, so please defer your discussion

of the case. It will be later finally submitted for the purpose of deliberation. The jury will temporarily retire.

(The following proceedings were had in the absence of the jury:)

The Court: Does the plaintiff have any exceptions?

Mr. Poth: I have none, your Honor.

The Court: Does the defendant have any exceptions? If so, he may proceed to do so at this time.

Mr. Howard: Comes now the defendant at the close of all the evidence, after argument and after the instructions have been read to the jury but before submission of the case to the jury, pursuant to applicable rules, and notes the following objections to instructions as given by the Court or the failure to give certain instructions hereinafter mentioned.

I don't have a copy of the instructions given by the Court, so I will be unable to refer to them by number. I will, however, undertake to identify them in the order in which they were given.

Defendant objects to the language used by the [564] Court in the instruction dealing with the admiralty law on unseaworthiness, which was based, if the Court please, on Plaintiff's Instruction No. 2.

The particular language which the defendant objects to is the use of the phrase "cargo unloading longshoreman and his foreman". The defendant submits now, as it has earlier in conference, that that is a factual issue as to the status of the plaintiff which should be left to the jury and should not be expressed in those terms by the Court. It should, on

the contrary, in defendant's opinion, be expressed in the terms of the law in an instruction such as was proposed by defendant, Instruction No. 15. In the same——

The Court: Have you finished that?

Mr. Howard, Yes, your Honor.

The Court: Allowed.

Mr. Howard: I believe as part of the same instruction or immediately following it, this was in the instruction in which the Court furnished Counsel with a draft earlier today, defendant—this is the instruction dealing with the duty of the defendant under its shipping contract with shippers. Defendant objects to the instruction in its entirety and to the fact that the instruction constitutes an unnecessary and unjustified comment by the Court on this particular aspect of the [565] case, the Court not having otherwise commented upon the facts and the evidence in the case.

In the same instruction defendant objects to the——

The Court: The exception is allowed.

Mr. Howard: The defendant objects to the second paragraph, the sentence beginning "One of such contractors, Seattle Stevedore Company," and also referring to Olympic Steamship Company, as being a statement by the Court which is upon an issue of fact that should have been retained for the jury's determination.

The Court: Allowed.

Mr. Howard: As to the next paragraph of the same instruction, which is the paragraph beginning

“The employees of each of said contractors,” defendant objects to that portion of the instruction on the basis that the Olympic Steamship Company was not, under any of the facts or the evidence in this case, entitled to use any of the unloading gear or equipment of the defendant Steamship Company. It is objected to on the basis of being an improper comment upon the evidence on a matter within the province of the jury and also on the ground that it is an inaccurate statement of the fact.

The Court: Is that all you have to say there?

Mr. Howard: On that one, yes, your Honor.

The Court: On that point does opposing Counsel wish to have any correction made, or are you satisfied with it?

Mr. Poth: I wonder if that could be read now just again.

The Court: Do you not have a copy of this?

Mr. Poth: Well, no. It's one that your Honor composed. Do you have a copy, your Honor?

Mr. Howard: Your Honor gave Counsel a copy of it.

Mr. Poth: I don't believe I was given a copy of that one.

Mr. Howard: I've got it here. (Handing paper to Mr. Poth.)

Mr. Poth: That says, your Honor,—here's the language: “The employees of each of such contractors in their work had the right to use defendant's unloading gear and equipment and to go upon such places under defendant's control as were reasonably

necessary in the performance by such contractors' employees of their work—". I don't see any necessity to instruct the jury because they do use the ship's gear lots of times to move cars and——

The Court: If you join in asking——

Mr. Poth: I don't join. [567]

The Court: Pardon?

Mr. Poth: From my knowledge of the work I can't see any necessity for instructing the jury.

The Court: If you think that in this case, not from your knowledge, there is any question about the undisputed evidence indicating any consent by the shipowner——

Mr. Poth: No, I don't see it.

The Court: ——that the dock workers may use unloading gear and equipment——

Mr. Poth: As is reasonably necessary, that's right. As long as that "reasonably necessary" is in there I see no objection to it.

The Court: It is a question of what the undisputed evidence in this case may show.

Mr. Poth: Well, it shows that they moved cars, that they took stuff from the hooks and made use of the gear of the ship in landing their loads and getting them on the bulls, and all that sort of stuff. As far as I'm concerned——

The Court: Does the evidence show that any of this material was on pallets which went on board the bull lifts?

Mr. Poth: That's right.

The Court: And went into the shed? [568]

Mr. Poth: Yes.

Mr. Howard: I submit, your Honor, that there is absolutely no evidence in this case that the employees of Olympic Steamship Company operating the dock had any right to use any of the unloading gear and equipment of the steamship or of the defendant Pope & Talbot, and if your Honor will recall I asked witness after witness one right after the other, "Did Mr. Cordray, the dock foreman, have anything to do with the manipulation of the cargo handling gear of the ship or the winging in of the booms?" and categorically right down the line they said no.

The Court: I am inclined to correct that part of the instruction which has these words in it, after the word "right" in the second line in this paragraph, I am considering correcting the instruction by eliminating the words "to use defendant's unloading gear and equipment and", leaving "to go upon such places under defendant's control as were reasonably necessary in the performance by such contractors' employees of their work of discharging—".

Mr. Howard: We further object to that same paragraph on the grounds that it is an unnecessary comment by the Court on the evidence and an unnecessary direction by the Court on a factual issue as to whether or not employees of the Olympic Steamship Company such [569] as the plaintiff had the right to go on the ship, which we submit in behalf of the defendant is an issue which should be left to the consideration of the jury and not determined by the Court in these instructions.

Defendant further excepts——

The Court: Now just a minute. Have you finished with that one?

Mr. Howard: Yes.

The Court: Is there anything finally——

Mr. Poth: No, I think your Honor has submitted the question to the jury as to whether he had a right to go aboard the vessel on this particular occasion.

The Court: Mr. Howard, do you remember that any witness said that the use of all of ship's gear stopped when the materials were landed, or was there evidence that some of the loads were higher lifting lifts used some of the loads that were left on the dock with the gear that they had?

Mr. Howard: I don't recall any such evidence, your Honor. As a matter of fact, the evidence was that there were two sling men employed by Seattle Stevedore Company who were stationed on the dock to do all that was necessary in connection with disconnecting the cargo handling gear of the ship from the loads of cargo after they were landed on the dock. [570]

Mr. Poth: Well, in the third paragraph I have no objection to striking out "defendant's unloading gear".

Mr. Howard: "and equipment"?

Mr. Poth: "unloading gear and equipment" and leave it "the right to go——"

The Court: I am going to strike that out.

Mr. Poth: But as to the other, I think it's per-

fectly correct and I think that we spent a lot of time on this instruction this morning.

Mr. Howard: I just want to record my objection, your Honor.

The Court: That is all that is necessary. You have that right.

Mr. Howard: Shall I proceed to the next paragraph?

The Court: The Court will correct that instruction as to the employees using "defendant's unloading gear and equipment and" by giving the instruction without that, striking those words. Do you wish the record to show that you except again to the Court's doing that or giving the instruction in its corrected form?

Mr. Howard: I don't object to the——

The Court: I mean to say do you except to the Court's giving what the Court has told you will be the [571] corrected form after striking from the form now given already to the jury these words: "to use defendant's unloading gear and equipment and"? Do you wish——

Mr. Howard: That overcomes one of the objections I have expressed to that paragraph, but the other one which I had previously expressed is still not corrected.

The Court: You do not get the point. Do you wish the record now to show the exception to the instruction in its final form as so corrected?

Mr. Howard: Yes.

The Court: Without the necessity, after the corrected form is given and the striking is done before

the jury, that we shall then thereafter again have to excuse the jury for you to——

Mr. Howard: No, I'm willing that the record so show as the Court stated.

The Court: Very well. I advise Counsel that I intend to strike the words from that part of the instruction that we are now referring to, which words are now "to use defendant's unloading gear and equipment and", and to ask the jury to disregard them and to instruct them to do so, and to restate to them the instruction as amended without those words, and to the giving of which instruction Counsel excepts now with like effect as if he did it after it was given and the jury again was [572] excused from the jury box for that purpose and the Court had then allowed the exception. The Court now allows the exception with like effect as if it were then made, because it now is made with the understanding between Counsel and the Court it will have the effect as if made after the striking and correction.

Mr. Howard: Thank you, your Honor. Proceeding to the next paragraph of the same instruction,——

The Court: You may do so.

Mr. Howard: The paragraph beginning, "In order for the plaintiff to recover," defendant objects to the term used by the Court in that instruction "dock-working longshoremen" on the ground and for the reason that defendant submits that that is a factual issue as to the status of the plaintiff as a dock foreman which should be left to the determina-

tion of the jury and should not be so defined in the instruction as to be a direction on that particular factual issue.

The Court: The Court wishes the record to contain this comment from the Court as the reason why that was given: The Court does not regard it as a comment on the evidence, any of this. The Court is stating the legal status of the plaintiff and his fellow employees as the Court understands it by virtue of the record on the evidence which is wholly undisputed. There [573] is no dispute from any party about any fact which is involved in the Court's considering this as stated, the legal status of the employees in question, and that is true as to all of these things which Counsel has been stating before this relating to this general subject in connection with which he has excepted on the grounds stated by him that the Court was commenting on the evidence. The Court does not believe it was commenting on the evidence. It did not intend to do so. It was merely stating the legal status of the persons referred to by virtue of the record in this case which is undisputed. There is no dispute about it at all. You may proceed.

Mr. Howard: May that objection be noted on the record?

The Court: That exception is noted and allowed.

Mr. Howard: Defendant further objects to this entire instruction on the ground that it is not tied in with the issue of unseaworthiness as proposed by defendant's Counsel in the course of instruction conferences.

Mr. Poth: Let the record show, your Honor, that I except to any exceptions made in my behalf by Counsel for the defendant.

Mr. Howard: Did I misstate myself as plaintiff's——

The Court: I do not remember what it was.

Mr. Howard: I didn't mean to. May I have that read back, your Honor? I want to have it straight.

The Court: You may.

(The reporter read Mr. Howard's statement beginning Line 17, Page 574.)

Mr. Poth: I'm sorry.

Mr. Howard: Following this particular instruction——

The Court: Was there any correction to be made?

Mr. Howard: No, that's all I have on that.

The Court: You may proceed.

Mr. Howard: Following this instruction the Court gave additional instructions on the definition and use of the term "seaworthiness" or "unseaworthiness".

The Court: Before you get to that and in connection with your exceptions on this other matter, did I understand that you were leaving that subject now?

Mr. Howard: I'm still on seaworthiness or unseaworthiness, your Honor.

The Court: I am thinking about this particular part of the instruction material.

Mr. Howard: I meant to pass now from that in-

struction that your Honor gave us a copy of in chambers.

The Court: I wish before you do that for the record to show that in that connection the Court offered [575] and the Court still offers, unless Counsel objects now as Counsel did when we were informally discussing the matter, to instruct the jury as follows:

“If you find that it was not reasonably necessary for plaintiff in order to properly carry out his work assignment with those working on the dock, or if plaintiff at the time and place of the accident had in fact no business or duty connected with any of the unloading work and was at the place of the accident for some purpose other than his work assignment on the dock, then the defendant would not be liable in this case.”

The Court is still willing to give that instruction unless defendant's Counsel or plaintiff's Counsel objects, and they do not have to make any response. I will have to, however, have a response in case it is desired that the instruction be given.

Mr. Howard: Well, if the Court please, I would like to respectfully respond to that and let the record show that I have previously objected to that portion which the Court offered to give and has now read into the record, and my objection was on the ground and for the reason that defendant does not believe that it is a proper place or is a proper statement in this case, the [576] portion, and the last part read by your Honor to the effect that defendant was at the place of the accident for some

purpose other than his work assignment on the dock, which language defendant expressly objects to.

The Court: In view of such objection the Court has not given and does not now propose to give the instruction because it concerns a field about which the Court was desirous of making more complete and exhaustive the instructions thought by the Court to be in aid of presenting defendant's theory of the case, and the Court believing it within the prerogative of defense Counsel to refuse the proffer by the Court of an instruction as to which the defendant never did make a request for it to be given by the Court.

Mr. Howard: Shall we pass on now?

The Court: You may now pass on.

Mr. Howard: Your Honor gave some instructions thereafter about seaworthiness or unseaworthiness.

The Court: A number of them.

Mr. Howard: I don't have those before me, but I would like to express an objection by the defendant to each and every one of such instructions on the ground and for the reason as to each of them that they are not tied in with the status of the plaintiff and the jury is not instructed as to the necessity of determining the status [577] of the plaintiff while aboard the ship as proposed by defendant in the last two paragraphs of Defendant's Proposed Instruction No. 4, and we object to the refusal of the Court to give those sections of Instruction No. 4 as proposed by the defendant.

The Court: Allowed.

Mr. Howard: Likewise the instructions which thereafter followed, which I'll have to refer to generally as I don't have a copy of them, pertaining to negligence and the burden of proof on the plaintiff with respect to the issue of negligence. Defendant objects to each of those instructions as given by the Court on the ground and for the reason as to each of such instructions dealing with negligence that they do not contain portions relating to the necessity of establishing the relationship of the plaintiff to the ship or to the defendant while he was aboard the ship such as were proposed by the defendant in its Instruction No. 7, Proposed Instruction No. 7, and defendant further objects to the refusal of the Court to give Instruction No. 7 as proposed.

The Court: Allowed.

Mr. Howard: Passing to the instructions on damages and relating to the determination of contributory negligence and the fixing of the amount of the verdict on contributory negligence, again I don't have the instructions [578] so I cannot refer to them by number. However, the objections of the defendant go to the failure of the Court to give defendant's Proposed Instruction No. 15 which we feel would be a more adequate statement of the rule as to mitigation of damages and would include in the instruction on damages the necessary portions relating to the determination of whether or not the plaintiff was within the class of workers entitled to recover on a warranty of seaworthiness and also, on the issue of negligence, whether the

plaintiff was within the class of workers defined as invitees to whom one duty of care was owed or was within the class of workers defined as licensees to whom another duty of care would be owed.

The Court: Allowed.

Mr. Howard: Those portions of our Instruction No. 15 were not given in the Court's instructions as to damages and we feel that therefore the Court's instructions on damages do not submit those issues at a proper time to the jury in these instructions.

The Court: Allowed.

Mr. Howard: The defendant further objects to the refusal of the Court to give our Proposed Instruction No. 1 calling for a directed verdict.

The Court: Allowed.

Mr. Howard: Defendant further objects to the [579] refusal of the Court to give defendant's Proposed Instruction No. 10 dealing with the question of whether there can be liability where the jury might find that the accident and injuries were caused solely by reason of improper use of a proper appliance by longshoremen employed by Seattle Stevedore Company. On the basis of the Freitas case in the Ninth Circuit and other cases which have been cited to your Honor in our trial brief and our memorandum on motions to dismiss we feel that we are entitled to an instruction of this nature.

The Court: Allowed.

Mr. Howard: Defendant further objects to the refusal of the Court to give defendant's Proposed Instruction No. 12 which starts in with the words "Shipowners are liable only for the results of their

negligence," and particularly to the failure of the Court to instruct on the last sentence of that paragraph as revised during instruction conference. Defendant proposed in Line 9 to insert the words "a preponderance" ahead of the words "the evidence", and defendant also indicated a willingness to strike from Line 11 the words "and stevedores". The Court nevertheless did not deem it appropriate to give that instruction. Defendant submits that that is a proper instruction under the *Freitas* case, 218 Federal 2d 562, that the negligence of a third [580] party is the issue that would be determined here and that nothing in the *Grillea* case in the Second Circuit should cause this Court to change the rule as it has been applied in the Ninth Circuit.

The Court: Allowed.

Mr. Howard: Defendant finally objects to the refusal of the Court to give special interrogatories to be answered by the jury as proposed by defendant accompanying its proposed instructions as submitted to the Court at the commencement of the trial of this case. Defendant feels that since we have here what purports to be a single cause of action grounded on either unseaworthiness or negligence, in order to preserve the record, in order to determine the basis on which the jury finds liability, if they should find liability, it is essential and imperative that we have special interrogatories.

The Court: Allowed. Is that all?

Mr. Howard: Yes, your Honor.

The Court: Bring in the jury.

(The following proceedings were had within the presence of the jury:) [581]

The Court: All of the jurors are present as before and all parties with their Counsel are present.

There was one instruction which the Court wishes to change, and in order to accomplish the change I will have to read the instruction as given. After that I intend to advise the jury of a part of it which the Court will strike. At least the Court will repeat enough of it to let you identify the instruction and then give to you the instruction which the Court wishes you to apply as correct.

The instruction in question which I desire to change is this:

“The employees of each of such contractors in their work had the right to use defendant’s unloading gear and equipment and to go upon such places under defendant’s control as were reasonably necessary in the performance of such contractors’ employees of their work of discharging the said cargo from the vessel hold to the point of rest on the floor within the dock warehouse.”

The Court now advises the jury that the words “to use defendant’s unloading gear and equipment and” are stricken from that instruction.

I direct the jury to lay my use in speaking as a part of the instruction of those words just then stated, namely, “to use defendant’s unloading gear and equipment [582] and” completely out of your minds with like effect as if you never had heard me speak them, and I wish you to consider as a part of all of the instructions the corrected instruction in

the form as it is after eliminating by such striking of those words I just specified.

I will now give to you that part of the instruction which is a part of all of the instructions for you to apply to your deliberations in this case. The corrected form of the instruction is as follows, which I wish you to so now consider as among the guides to your deliberations:

“The employees of each of such contractors in their work had the right to go upon such places under defendant’s control as were reasonably necessary in the performance by such contractors’ employees of their work of discharging said cargo from vessel hold to point of rest on the floor within the dock warehouse.”

The fact that the Court has in this manner amended the instructions and as a result of it and as a part of the process of amending has read the corrected instruction and given it to you and most of the words therein constitute a repetition of them, that mere fact of repetition and of correction shall not be regarded by you as placing or entitling you to place any more importance to the instruction as it is now given to you [583] in its corrected form than if it never had been so corrected and the Court never had so dealt with the matter in this manner. You are to consider this corrected form of instruction only as a part of all of the instructions given to you with no more emphasis or effect but with like effect as if the Court has never stated any word of it to the jury but once, and then along with it in

order with the other ones given you by the Court touching the matters and things in this case.

If there is nothing else to be said or done at this time the Court will now finally submit the case to the jury for their deliberation and verdict. Is there anything else to be said?

Mr. Howard: That's all.

Mr. Poth: Nothing, your Honor.

The Court: The bailiffs will now be sworn by the clerk.

(Thereupon, one female and one male bailiff were sworn by the clerk of the court.)

The Court: Members of the jury, the jury will now retire to the jury room to consider your verdict, being hereafter in the conduct of the bailiffs, and you will hereafter remain together at all times until discharged by the Court from further consideration of this [584] case.

Before you actually go, may I make this statement from a practical standpoint. It is not a part of the instructions, what I am now about to say, it is just merely for whatever practical consideration you wish to give it.

Ordinarily when a case is submitted at this late an hour, with reference to the noontime hour, we have found in the past that it saves the jury's time if after they go to the jury room to deliberate on their verdict they immediately do what they are supposed to do about the foreman, namely, they immediately elect their foreman in the manner the Court has already instructed you, and that thereafter you take a recess in your deliberations and

permit the bailiffs to immediately conduct you to lunch, which the Government will provide.

As to whether you do that, that is a matter for you to decide, and my speaking of it is just merely for such practical consideration as you wish to give it. It is not an instruction binding upon you. You can do without your lunch, defer your lunch as long as you wish to, if you feel that is what you want to do. That is a matter for you to decide.

I would like to add one other thing, which [585] also is not an instruction but it is just a practical consideration growing out of our experience.

The selection and election of your foreman is a very important thing. You should not vote for anyone among your number for that position of foreman merely for some consideration of sympathy or politeness or of personal courtesy. The foreman of a jury has a great responsibility. He is not supposed to control any of the jurors' votes, that is not it, but he ought to be or she ought to be a person with sufficient ability and understanding that his fellows or her fellow jurors will have the normal respect which they usually accord to people taking a responsible position of this kind. The foreman in his work may properly lead the discussions, but whether that leadership shall influence anybody's vote is not the object of such foremanship. The object of the foreman properly should be that he be a man whom all of the jurors respect both in his character and in his ability and in his general understanding and in respect to the way he reacts to his normal responsibilities in life and to the questions

which are of importance in a matter of this type. If you think the foreman would be especially qualified to lead the jury's work and deliberations and considerations in a subject of this kind, that would also be worth your consideration. [586]

All of these things which I have said were practical in nature merely for whatever consideration you wish to give them.

The jury will now retire to the jury room to deliberate upon and consider your verdict.

(Thereupon, at 12:25 o'clock p.m., Friday, November 15, 1957, the jury retired to consider its verdict.)

(At 5:00 o'clock p.m., the following proceedings were had in the absence of the jury:)

The Court: May the record show that Counsel agree that the Court may arrange for overnight accommodations at a suitable downtown Seattle hotel and may if necessary permit the men jurors to be separated or subseparated as may be required but kept together in as large groups as possible, and that of course the women jurors may occupy separate quarters from those of the men without objection on the ground that the jury was separated?

Mr. Howard: That is agreeable.

Mr. Poth: That is agreeable. [587]

The Court: Is it stipulated the Court may do that?

Mr. Howard: That's agreeable.

Mr. Poth: It's so stipulated, your Honor.

The Court: The court will be adjourned under the previous order.

(Thereupon, at 5:05 o'clock p.m., Friday, November 15, 1957, an adjournment herein was taken.) [588]

[Endorsed]: Filed January 21, 1958.

PLAINTIFF'S EXHIBIT No..3

SEATTLE TERMINALS TARIFF No. 100

* * * * *

Item No. 20

Acceptance of Tariff

Use of terminals or facilities shall be deemed an acceptance of this tariff and the terms and conditions named herein.

* * * * *

Item No. 120

Man-Hour Rates; Overtime, Standby and
Waiting Time

All of the Provisions of Seattle Terminals Tariff No. 2-D, Items 460 and 470, will apply for services performed at man-hour rates and for overtime, standby time, penalty time, and waiting time incurred in connection with terminal services and privileges performed under this tariff.

* * * * *

Item No. 380

Service Charge Defined

Except as otherwise provided in individual items, Service Charge is the charge assessed against ocean vessels, their owners, agents, or operators, which

Plaintiff's Exhibit No. 3—(Continued)

load or discharge cargo at the terminals for performing one or more of the following services: (Subject to Notes 1, 2, 3, and 4).

1. Providing terminal facilities.
2. Arranging berth for vessel.
3. Arranging terminal space for cargo.
4. Check cargo.
5. Receive cargo from shippers or connecting lines and give receipts therefor.
6. Deliver cargo to consignees or connecting lines and take receipts therefor.
7. Prepare dock manifests, loading lists, or tags covering cargo loaded aboard vessels.
8. Prepare over, short, and damage reports.
9. Order cars, barges, or lighters as requested or required by vessels.
10. Give information to shippers and consignees regarding cargo, sailing and arrival dates of vessels, etc.
11. Lighting the terminal.

Note 1: Service Charge will not apply on bulk liquids pumped through pipe lines.

Note 2: Service Charge does not include any freight handling, loading nor unloading operations, nor any labor other than that which is essential to performing the service.

Note 3: When it is required and permitted that the services of checking, receiving, and/or delivering cargo be performed by the U. S. Government,

Plaintiff's Exhibit No. 3—(Continued)

with its own personnel or with personnel in its employ and under its direction, service charge rates as named in Item 410 will apply.

Note 4: When owners, agents, or operators of vessels are permitted to perform the services of checking, receiving and/or delivering of cargo with their own personnel or with personnel directly in their employ and under their direction, service charge rates named in Item 410 will apply.

* * * * *

Column A—Rates apply on cargo loaded or discharged from or to terminals.

* * * * *

Item No. 420

Handling Defined

Handling charge is the charge made against vessels, their owners, agents, or operators for moving freight from end of ship's tackle on the wharf to first place of rest on the wharf, or from first place of rest on the wharf to within reach of ship's tackle on the wharf. It includes ordinary sorting, breaking down and stacking on wharf.

Item No. 430

Direct Loading or Discharging

(A) Direct loading or discharging is the operation of transferring freight by vessel with vessel's gear or other mechanical equipment between vessel and

1—open top railroad cars spotted alongside vessel

Plaintiff's Exhibit No. 3—(Continued)

2—water, raft, barge, lighter, or other vessel

(B) Freight loaded or discharged direct from or to open cars, as defined in Paragraph (A), will be assessed wharfage but will not be assessed handling charges by the terminal. Freight so loaded or discharged will not be checked by terminal. Checking service and any labor or equipment furnished by the terminal upon request, will be subject to charges in accordance with Items 440, 460, and 470, Seattle Terminals Tariff No. 2-D, WN.T. No. 21.

(C) Freight loaded or discharged direct from or to water, raft, barge, lighter, or other vessel, as defined in Paragraph (A), will be assessed wharfage. Freight so loaded or discharged will not be checked by terminal. Checking service and any labor or equipment furnished by the terminal upon request, will be subject to charges in accordance with Items 440, 460, and 470, Seattle Terminals Tariff No. 2-D, WN.T. No. 21.

(D) Terminals will not be responsible for overloading, improper loading, condition, or outturn of freight loaded or discharged as defined in Paragraph (A).

(E) Car blocking and dunnaging, as required, is assessed charges as per Item 700, Seattle Terminals Tariff No. 2-D, WN.T. No. 21.

* * * * *

Admitted in Evidence Nov. 12, 1957.

PLAINTIFF'S EXHIBIT No. 4
SEATTLE TERMINALS TARIFF No. 2-D

PARTICIPATING TERMINALS

Name of Participant — Location — Washington
Power of Attorney Number:

Alaska Terminal & Stevedoring Company, Seattle, Washington, 1.

Arlington Dock, Inc., Seattle, Washington, 1.

Canadian Pacific Railway Company (lines Port Arthur, Ont. and west thereof), Seattle, Washington, 2.

Griffiths & Sprague Stevedoring Co., Seattle, Washington, 2.

*** (Eliminate Luckenbach Steamship Company, Inc. Operation discontinued. Power of attorney revoked.)

Matson Terminals, Inc., Seattle, Washington, 1.
Rates, charges, rules and regulations contained in Seattle Terminals Tariff No. 2-D, WN. T. No. 21, revisions thereto or reissues thereof, apply except as to freight traffic from or to the Hawaiian Islands. Rates for such traffic handled by Matson Terminals, Inc. at Union Pacific dock will be found in Matson Terminals, Inc. Tariff No. 6-A (WN. T. No. 7) and Matson Navigation Company Tariff No. A-3 (FMB F No. 62), revisions thereto or reissues thereof.

Olympic Steamship Co., Inc., Seattle, Washington, 1.

Port of Grays Harbor, Aberdeen, Washington, 1.

Plaintiff's Exhibit No. 4—(Continued)

Port of Port Angeles, Port Angeles, Washington, 1.

Port of Seattle, Seattle, Washington, 1.

Port of Willapa Harbor, Raymond, Washington, 1.

Salmon Terminals, Seattle, Washington, 1.

* * * * *

Item No. 10

Notice to Public

This tariff is published and filed as required by law and is, therefore, notice that the rates, rules and charges apply to all traffic without specific notice, quotation or arrangement.

* * * * *

Item No. 30

Use of Terminals Deemed Acceptance

Use of wharves or facilities shall be deemed an acceptance of this tariff and the terms and conditions named herein.

* * * * *

Item No. 90

Manifests Required

Owners, agents, operators, or masters of vessels must furnish a complete copy of manifest of cargo loaded or discharged at terminal.

* * * * *

Item No. 110

Charges, Collected From Whom

All charges named in this tariff will be assessed against freight, and when not absorbed by the ocean or rail carriers, are due from the owner, shipper,

Plaintiff's Exhibit No. 4—(Continued)

or consignee of the freight. On freight moving in connection with ocean carriers, charges, (unless absorbed by rail or ocean carriers), of which the vessel, its owners or agents have been apprised, will be collected from and payment of same must be guaranteed by the vessel, its owners or agents. The use of the terminal by a vessel, its owners or agents shall be deemed an acceptance and acknowledgment of this guaranty. Owners or agents of vessels, if and when permitted to make own deliveries of freight from wharf, will be held responsible for payment of any charges against freight delivered by them and accruing to the terminal.

* * * * *

Item No. 130

Right to Refuse Freight

Right is reserved by terminal operators without responsibility for demurrage, loss or damage attaching, to refuse to accept, receive or unload or to permit vessel to discharge:

(1) Freight for which previous arrangements for space, receiving or unloading have not been made by shipper, consignee, or carrier.

(2) Freight deemed extra offensive, perishable or hazardous.

(3) Freight, the value of which may be determined as less than the probable terminal charges.

(4) Freight not packed in packages or containers suitable for standing the ordinary handling incident to its transportation. Such freight, however, may be repacked or reconditioned at discretion of

Plaintiff's Exhibit No. 4—(Continued)

terminal operator and all expense, loss or damage incident thereto shall be for account of shipper, consignee, owner, or carrier. The term "container" or "package", as used in this tariff, shall mean any suitable article or method of rendering the commodity susceptible to ordinary handling and stowing incident to its transportation.

* * * * *

Item No. 140

Right to Remove, Transfer or Warehouse Freight

Hazardous or offensive freight or freight which, by its nature, is liable to damage other freight, is subject to immediate removal either from the wharf or wharf premises or to other locations within said premises with all expense and risk of loss or damage for the account of owner, shipper or consignee.

Freight remaining on wharf or wharf premises after expiration of free time, as defined herein, and freight shut out at clearance of vessel may be piled or repiled to make space, transferred to other locations or receptacles within the wharf premises, or removed to public or private warehouses with all expense and risk of loss or damage for account of the owner, shipper, consignee, or carrier as responsibility may appear.

* * * * *

Item No. 190

Liability For Loss or Damage Limited

The terminals will not be responsible for any loss or damage caused by fire, frost, heat, dampness, leakage, the elements, evaporation, natural shrinkage, wastage or decay; animals, rats, mice or other

Plaintiff's Exhibit No. 4—(Continued)

rodents; moths, weevil or other insects; leakage or discharge from fire protection systems, collapse of buildings or structures, breakdown of plant or machinery or equipment; or by floats, logs, or piling required in breasting vessels away from wharf; nor will it be answerable for any loss, damage, or delay arising from insufficient notification, or from war, insurrection, shortage of labor, combinations, riots or strikes of any persons in its employ or in the services of others or from any consequences arising therefrom.

In performing the service of checking, the terminals will accept no responsibility for concealed damage nor for the condition of contents of packages, cases, or other containers, whether or not receipts issued so state.

* * * * *

Item No. 200

Liability For Injury

If and when others than the terminal companies are permitted to perform services on the wharves or premises of the terminal companies, they shall be liable for the injury of persons in their employ and shall also be held responsible for loss, damage, or theft by themselves or persons in their employ.

Item No. 210

Demurrage—Cars, Barges or Vessels

In furnishing the service of ordering, billing out, loading or unloading cars, or of handling to or from vessel, no responsibility for any demurrage whatso-

Plaintiff's Exhibit No. 4—(Continued)

ever on either cars or vessels will be assumed by the terminals.

Item No. 220

Delays, Waiver of Charges

Delays in loading, unloading, receiving or delivering freight arising from combinations, riots or strikes of any persons in the employ of the terminal companies or in the services of others or arising from any other cause not reasonably within the control of the terminal companies, will not entitle the owners, shippers, consignees, or carriers of the freight to waiver of wharf demurrage or any other terminal charges or expenses that may be incurred.

* * * * *

Item No. 600

Wharfage, Definition Of

Wharfage is the charge that is assessed on all freight passing or conveyed over, onto, or under wharves or between vessels or overside vessels when berthed at wharf or when moored in slip adjacent to wharf. Wharfage is the charge for use of wharf and does not include charges for any other service.

* * * * *

Admitted in Evidence Nov. 12, 1957.

PLAINTIFF'S EXHIBIT No. 7

WATERFRONT EMPLOYERS
OF WASHINGTON1611 Exchange Building
Seattle 4, Washington

October 14, 1957

Gentlemen:

Re Employee: Jack Cordray.

In response to your request, we furnish herewith the employment information for the employee and period requested, based on the records of employment as submitted to the Association by the direct Employers participating in the Association's collective wage and employment tax reporting system:

SSA No.: 532-12-3263; Work No.: 582; Port of Work: Seattle.

Total Wages: \$. In the period:

Total Hours: 1206 $\frac{1}{2}$ In the period: 19491187 $\frac{1}{4}$ 1950

1902 1951

1676 $\frac{3}{4}$ 1952

1684 1953

Other: 1615 1954

1881 $\frac{3}{4}$ 19551560 $\frac{3}{4}$ 19561175 $\frac{1}{2}$ 1957through
9/30/57

Very truly yours,

WATERFRONT EMPLOYERS
OF WASHINGTON,

/s/ GEORGE ORTON,
George Orton,
Acting Treasurer.

GO:ch

Admitted in Evidence Nov. 13, 1957.

DEFENDANT'S EXHIBIT "A-1"
from

to AT PIER 48 SEATTLE Date 1 DAY July 13, 1971

[illegible][illegible][illegible]

BURNING LIGHTS				LANGUETS			
Frame		COTTELES IN DAY FRAME		COTTELES IN NIGHT FRAME		Stage	Music
		A.M.	P.M.	A.M.	P.M.		
Midnight to	A.M.	1	0 4	1	0 4	0000	GUARD ON DUTY IN A 4 HOURS
	P.M. to Midnight	2	0 6	2	0 4	0000	
		3	0 5	3	0 4		
		4	0 1	4	0 4		
		5	0 1	5	0 4		
Full		6		6			
1		7		7			
2		8		8			
3		9		9			
4		10		10			
5		11		11			
6		12		12			
7							
8							
9							
10							
11							
12							

0000 RBERGH ^{N/A} ON DUTY

0100 1/2 RESUME DISCH. # 2-3 S

0330 FINISH PUMPING # 4 DEPTANK

0345 # 5 GANG SHIFT TO # 4 TRIM GEAR & DISCH. HOATS 0/0

0400 COMM. PUMP OIL # 5 DEPTANK

0500 # 4 GANG KO

0600 # 2-3 GATES KO, FINISH PUMP OIL # 5 DEPTANK

0800 RBERGH RELIEVED BY SHIPS OFFICERS RB

0900 - 655 1/2 hrs. daily 24 hr. (23 = 2)

1000 - # 1 gang 2 men -

1100 - # 2-3-4-5 21 men - # 1 ST # 5

[illegible]

1307 - 4 1/2 brown birds, 20 birds.
1600 A.W. S. HILARY 1400 on entry
1800 4/5 K.O. on the way
1900 4/5 about working 3000 2000 2000
2145 from 2000 2000 to 2000
2400 R. on migration made all aware. *Paul*

[illegible]



Log of the **S.S. M.V.**

ADVENTURES

Defendant's Exhibit "A.1" - (Continued) **from**

to **AT PIER 48, SEATTLE** Date **SATURDAY JULY 14, 1956**

Time	Lat	Course			Wind		Barometric		Temperature		Crew		Engine		Remarks
		Standard	Course	Speed	Direction	Force	Barometric	Alt	Wet	Dry	Engine	Oil	Water	Oil	
A.M.															
1															
2															
3															
4															
5															
6															
7															
8															
9															
10															
11															
12															

Latitude	Longitude	Course	Distance	Total Distance	Latitude at Day	Total Time at Day	Arrival Date	Total Arrived	Departure
----------	-----------	--------	----------	----------------	-----------------	-------------------	--------------	---------------	-----------

Time	Lat	Long	Course	Speed	Direction	Force	Barometric	Alt	Wet	Dry	Engine	Oil	Water	Oil	Remarks
P.M.															
1															
2															
3															
4															
5															
6															
7															
8															
9															
10															
11															
12															

BOWDO LISTS			Crew			Passengers			Cargo			
System	No.	Remarks	No.	Remarks	No.	Remarks	No.	Remarks	No.	Remarks	No.	Remarks
A.M.			P.M.			A.M.			P.M.			
Midnight to			P.M. to Midnight			A.M.			P.M.			
DEWING WATER												
Fuel												
Oil												
Water												
Air												
Gas												
Lubricant												
Other												
Total												

REMARKS

ZD + PMS.

000 R. Bergh 7/11 on duty
 0100 4/5 RESUME DISCH. # 2-3-4-5
 0500 ALL GAMES K.O.
 0530 Sailors Turn to RIGGING JUMBO GEAR
 0800 R. BERGH RELIEVED BY R.R. FLAHERTY R.R.
 0800 FIVE (5) gaug. HANDED, RESUME DISCH. #1 CAN. 72 ST. ST. 1/2
 #3 HANDED, HEAVY STEEL PLATE, #4 HANDED, WIRE ROPE, #5 HANDED, WIRE ROPE
 08:15 HANDED, WIRE ROPE
 1100 Slog in #1-2 & 4 K.O. LUNCH.

1200 #1 & 4 RESUME DISCH. AS BEFORE.
 1200 #5 gaug. K.O. LUNCH #3 L.H. (GWS) WICKING THROUGH, RELIEVED BY #2 gaug.

ENGINE PERFORMANCE

Distance at Engine	Speed at Engine	Arrival at P.M.	Arrival at P.M. (Per Cent)	Per Cent (Per Cent)	Per Cent (Per Cent)	Per Cent (Per Cent)	Per Cent (Per Cent)	Per Cent (Per Cent)	Per Cent (Per Cent)	Per Cent (Per Cent)	Per Cent (Per Cent)	Per Cent (Per Cent)	Per Cent (Per Cent)	Per Cent (Per Cent)	Per Cent (Per Cent)
--------------------	-----------------	-----------------	----------------------------	---------------------	---------------------	---------------------	---------------------	---------------------	---------------------	---------------------	---------------------	---------------------	---------------------	---------------------	---------------------

1300 #3 gaug. RESUME DISCH. AS BEFORE, #3 gaug. RESUME DISCH. #2 SHIP TO #2, RESUME DISCH. - E.T.D.
 1315 FINE WIND DISCH. #2 L.T.D. UNIVER, STARTED DISCH. #2 L.H., 1330 L.A. 2007.
 1615 FINE WIND DISCH. #1 L.T.D. UNIVER, STARTED DISCH. #1 L.H., 1515 L.A. 2007.
 1600 R.R. FLAHERTY RELIEVED BY A.W. SHIGLEY
 1615 FINE WIND DISCH. #2 L.T.D. UNIVER, STARTED DISCH. #2 L.H., 1630 L.A. 2007.
 1640 FINE WIND DISCH. #1 L.T.D. UNIVER, STARTED DISCH. #1 L.H., 1650 L.A. 2007.
 1700 SAILORS TURN TO SECURING JUMBO 1840 SAILORS 50. FOR SHOW
 1800 SAILORS TURN TO SECURING JUMBO 1840 SAILORS 50. FOR SHOW
 Slog about steel making 1, 3, 4 & 5 2400 Slog K.O. for lunch

BALLAST TANKS				REFRIGERATION				DRAFT OF VESSEL			
Time	Lat	Long	Temp.	Time	Lat	Long	Temp.	Time	Lat	Long	Temp.
1				1				1			
2				2				2			
3				3				3			
4				4				4			
5				5				5			
6				6				6			
7				7				7			
8				8				8			
9				9				9			
10				10				10			
11				11				11			
12				12				12			

Log of the **S.S. WACATA**

Defendant's Exhibit "A-1" - (Continued)

from

Hour	Lat	Course	Wind	Temperature	Time	Distance	Remarks
	Reckoned	Observed	Direction	Force	Air	Water	Current
1	0215	all cargo out of #5					
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							

Latitude	Longitude	Course	Distance	Time Distance	Latitude or Dist	Time Lat or Dist	Amount from	Time Amount from	Remarks
----------	-----------	--------	----------	---------------	------------------	------------------	-------------	------------------	---------

Hour	Lat	Course	Wind	Temperature	Time	Distance	Remarks
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							

Hour	Lat	Course	Wind	Temperature	Time	Distance	Remarks
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							

to at **Pine #8** **Latitude** **Date** **Sunday July 15, 1936**

Hour	Lat	Course	Wind	Temperature	Time	Distance	Remarks
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							

Latitude	Longitude	Course	Distance	Time Distance	Latitude or Dist	Time Lat or Dist	Amount from	Time Amount from	Remarks
----------	-----------	--------	----------	---------------	------------------	------------------	-------------	------------------	---------

Hour	Lat	Course	Wind	Temperature	Time	Distance	Remarks
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							

Hour	Lat	Course	Wind	Temperature	Time	Distance	Remarks
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							

DEFENDANT'S EXHIBIT A-5

WATERFRONT EMPLOYERS
OF WASHINGTON

1611 Exchange Building
Seattle 4, Washington

October 4, 1957

Summers, Bucey & Howard
Central Building
Seattle 4, Washington

Gentlemen:

Re Employee: Jack V. Cordray.

In response to your request, we furnish herewith the employment information for the employee and period requested, based on the records of employment as submitted to the Association by the direct Employers participating in the Association's collective wage and employment tax reporting system:

SSA No.: 532 12 3263; Work No.: 582; Port of Work: Seattle.

	1957
Total Wages: \$591.07	In the period: January
462.32	February
384.40	March
369.12	April
861.77	May
485.92	June
653.56	In the period: July
359.78	August
467.42	September

Other: May wages include three weeks vacation pay accrued in 1956 and paid in 1957.

Very truly yours,

WATERFRONT EMPLOYERS
OF WASHINGTON,

/s/ GEORGE ORTON,
George Orton,
Acting Treasurer.

GO:ch

Admitted in Evidence Nov. 13, 1957.

DEFENDANT'S EXHIBIT A-6

WATERFRONT EMPLOYERS
OF WASHINGTON

1611 Exchange Building
Seattle 4, Washington

March 1, 1957

Summers, Bucey & Howard
Central Building
Seattle 4, Washington

Gentlemen:

Re Employee: Jack V. Cordray.

In response to your request, we furnish herewith the employment information for the employee and period requested, based on the records of employment as submitted to the Association by the direct

Employers participating in the Association's collective wage and employment tax reporting system:

SSA No.: 532-12-3263; Work No.:.....; Port of Work:.....

Total Wages: \$5,887.67	In the period: 1951
5,204.45	1952
5,733.97	1953
5,115.38	1954
5,845.38	1955
5,493.29	1956
1,053.41	1957
	through
	2/25/57

Other:.....

Very truly yours,

WATERFRONT EMPLOYERS
OF WASHINGTON,

/s/ J. R. SHIELDS,
J. R. Shields.

JRS:ch

Admitted in Evidence Nov. 13, 1957.

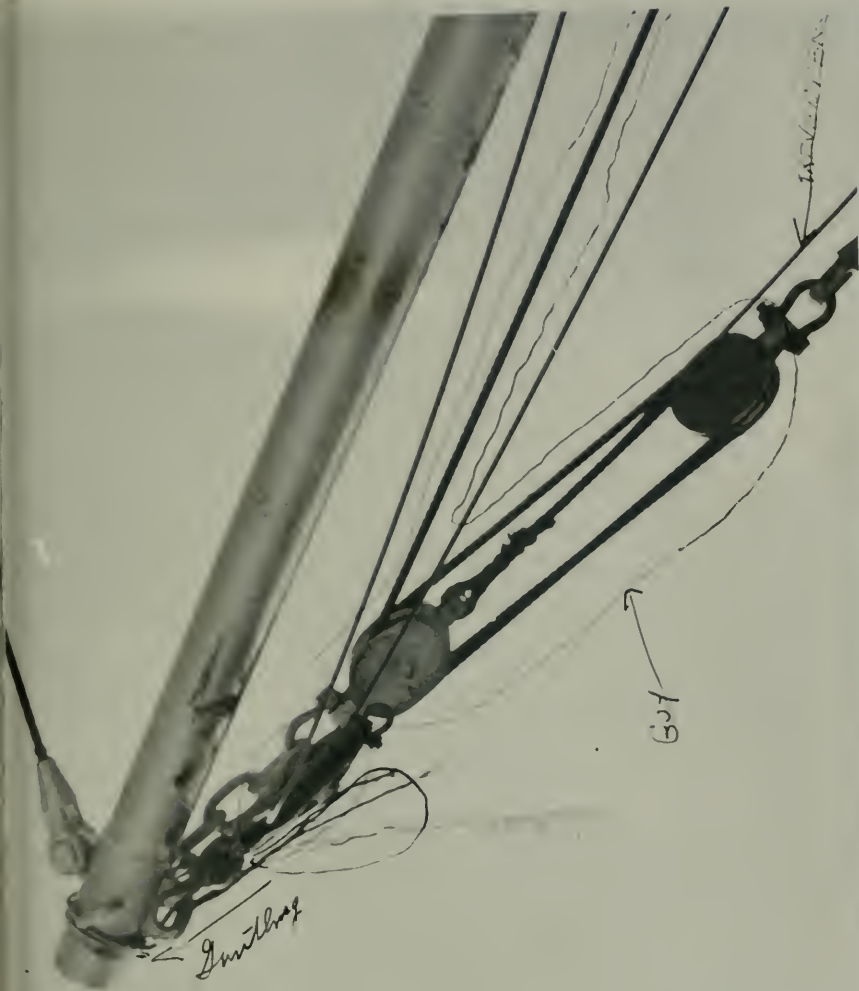


Photo by Merle Junk, Olympia

DEFENDANT'S EXHIBIT A-9

STEVEDORING CONTRACT

* * * * *

MEMORANDUM OF AGREEMENT

Made this 1st day of July, 1949.

Between: Williams, Dimond & Co. (hereinafter called the Stevedoring Company, First Party).

And: Pope and Talbot, Inc. (hereinafter called the Steamship Company, Second Party).

I.

It is mutually agreed between the parties hereto, that the Stevedoring Company will act as stevedores, and that they will with all possible dispatch, load and/or discharge all cargoes of vessels owned, controlled, chartered, or managed by the Steamship Company at the ports of Seattle and Tacoma Area, as directed. And it is agreed that the Steamship Company will grant to the said Stevedoring Company the exclusive right of handling all such cargoes as before mentioned under the terms of this agreement, and will pay for the work done by the Stevedoring Company in lawful money of the United States at the rates set forth in Schedule "A" attached hereto and made part thereof.

II.

It is understood and mutually agreed by the parties hereto:

A. That the Stevedoring Company will furnish

Defendant's Exhibit A-9—(Continued)

all necessary labor and supervision and all ordinary gear for the performance of the services described in this contract, including winch drivers and usual appliances used for stevedoring.

B. That the Steamship Company will furnish suitable booms, winches, blocks, and falls, steam and/or power, and will maintain the same in safe and efficient working condition during the progress of the work.

III.

It is understood and agreed that, in the execution of the work under this contract, the provisions of any labor agreement existing between the longshoremen and/or other labor groups and the Pacific Maritime Association governing (or in the absence of such labor agreement, any regulations or current practices of the port applicable to) longshore work performed in the ports in the Seattle and Tacoma Area shall be observed.

IV.

A. All stevedoring rates specified are based on, and subject to, the employment of present longshore and related labor at the wage scales and under the working conditions existing in the port as of the date of the execution of this contract, under respective labor agreements between the longshoremen and/or other labor groups and the Pacific Maritime Association. In the event of an increase or decrease in such wage scales or a change in such working conditions, the rates specified herein shall, as a consequence, be proportionately increased or decreased,

Defendant's Exhibit A-9—(Continued)

as of the effective date of such change, retroactively, currently, or prospectively, as the case may be.

B. The Stevedoring Company agrees to notify the Steamship Company prior to working any man by said Stevedoring Company in excess of 12 hours per day or 56 hours per week. The Steamship Company will advise the Stevedoring Company immediately after such notification is received whether or not such excess hours shall be worked. Should the Stevedoring Company fail to notify the Steamship Company as agreed above of said intention to work beyond said hours, all such excess time worked (viz., overtime on overtime) shall be for account of the Stevedoring Company. The Steamship Company shall have no right to require the Stevedoring Company to work any individual employee of the Stevedoring Company in excess of 1,000 hours in any period of 26 consecutive weeks.

V.

The Steamship Company agrees that the officers of its vessels are to give every assistance at their command to facilitate the work of loading and discharging its vessels.

VI.

The Stevedoring Company shall carry:

A. Workmen's Compensation insurance for the protection of its employees under State and Federal laws.

B. Public Liability insurance in the amount of \$250,000.00 as respects bodily injury or death of one

Defendant's Exhibit A-9—(Continued)

person, and in the amount of \$500,000.00 as respects bodily injury to, or death of, more than one person, on account of any one accident, as protection against injury to or death of any person or persons arising out of negligence of the Stevedoring Company under this agreement.

C. Property damage insurance in the amount of \$250,000.00, with a deductible amount of \$100.00 as protection against loss or injury to property arising out of negligence of the Stevedoring Company under this agreement.

VII.

The Stevedoring Company will be responsible for damage to the ship and its equipment, and for damage to cargo or loss of cargo overside, and for injury to or death of any person, caused by its sole negligence, provided, however, when such damage occurs to the ship or its equipment, or where such damage or loss occurs to cargo, the ship's officers or other authorized representatives call the same to the attention of the Stevedoring Company at the time of occurrence or before ship finishes cargo at that Port. The Steamship Company shall be responsible for the injury to or death of any person or for any damage to or loss of property arising through the sole negligence of the Steamship Company or any of its agents or employees, or by reason of the failure of ship's gear and/or equipment.

VIII.

In the event of strikes, lockouts, union disputes,

Defendant's Exhibit A-9—(Continued)

or other labor disturbances the Stevedoring Company will be under no obligation to undertake performance of this contract. No liability shall attach to the Stevedoring Company if the terms of this Agreement cannot be performed due to acts of God, riots, Civil or labor disturbances, war, restraints of governments, fire, explosion, or other acts beyond its control.

IX.

The contract rates are based on the use of the two usual slingmen. When handling cargo direct to or from open cars or barges alongside vessel any extra men required are to be paid for at bare labor cost in addition to the contract rates.

X.

This agreement is subject to the following provisions with respect to charges for overtime, ship's time, handling of damaged cargo, and other extras;

A. When the Stevedoring Company is required to work at locations where travel time is required to be paid the men, in accordance with the wage scale, such travel time will be charged for at bare labor cost. When vessels are worked in the stream or other places where means of transportation for the men are required, or meal allowances must be paid in accordance with the labor agreement, any expense so incurred will be charged for at cost. The expense of transportation of gear and equipment to and from locations not accessible by Auto Truck or in the stream, will be charged for at cost.

Defendant's Exhibit A-9—(Continued)

B. Rates set forth in Schedule "A" are to be charged on all cargo handled on the basis of 2,000# weight, ~~or 40 Cubic Feet to the ton~~, weight, or measurement as freighted, as specified.

C. Said rates are for work performed during ordinary straight time working hours designated as the first six (6) hours worked between 8:00 A.M. and 5:00 P.M. during the period from 8:00 A.M. Monday to 5:00 P.M. Friday.

D. For work performed during overtime, i.e., all work in excess of six (6) hours between 8:00 A.M. and 5:00 P.M. and between 5:00 P.M. and 8:00 A.M. on week days and from 5:00 P.M. on Friday to 8:00 A.M. on Monday, and all work on legal holidays and during hours in excess of twelve (12) per day and/or fifty six (56) per week (viz., overtime on overtime) or during penalty hours or meal hours, the Stevedoring Company, in addition to the rates specified herein shall be reimbursed the amount of its extra bare labor cost. The extra wage paid for such overtime and penalty time will be as set forth in the current labor agreement governing longshore and related labor.

E. Work performed on board, around or in connection with vessels of the Steamship Company, such as rigging and unrigging special gear, discharging debris, shifting and laying special dunnage, cleaning holds, handling ship's lines and gangways shall be paid for at bare labor cost.

F. Work performed on board, around or in connection with vessels of the Steamship Company,

Defendant's Exhibit A-9—(Continued)

such as shifting and restowing cargo, shifting coal, loading mail, baggage, ship's stores or excess dunnage and carpenter or cooper work shall be paid for at bare labor cost plus 10%.

1. In case the Stevedore is called upon to open and close a hatch wherein he does not handle 50 stevedore revenue tons at the time in that hatch, he will be reimbursed for the cost of rigging and handling such beams and hatches at bare labor cost.

G. When handling cargo damaged by fire, water, oil, etc. and where such damage causes distress or obnoxious conditions, or in all cases where the men are called upon to handle cargo under distress conditions, the Stevedoring Company charges are to be based upon the bare labor cost, in accordance with the labor agreements, plus 25% for overhead, depreciation of gear, and profit, in lieu of the rates specified herein, together with the cost of gear destroyed and the cost of equipment for the protection of the men as may be required. If the condition of the cargo or packages or vessel or pier is other than in customary good order, thereby delaying prompt handling, special arrangements shall be agreed upon in lieu of the rates herein specified.

H. Whenever work is interrupted after starting, and detentions of not over fifteen minutes delay occur, the Stevedoring Company will make no charge for reimbursement therefor. Should such detention time exceed fifteen minutes delay, the Stevedoring Company will charge full detention time at bare labor cost. When men are employed and unable

Defendant's Exhibit A-9—(Continued)

to work through causes beyond the Stevedoring Company's control, or when men are to be paid for a minimum working period in accordance with the labor agreement, the cost of such waiting or idle time will be charged for by the Stevedoring Company at bare labor cost.

XI.

A. The term "bare labor cost" as used herein shall mean compensation paid as required by applicable and prevailing labor agreements plus State and Federal taxes and insurance payable on a payroll basis.

B. To all rates and charges expressed herein, including charges based on bare labor cost, there shall be added a charge of \$.10 per man hour for vacation allowance. This charge will be adjusted when the Pacific Maritime Association has determined the actual liability per man hour. This clause to apply to I. L. & W. U. ports only.

C. Where men are working in ports and under contracts covered by agreements with the International Longshoremen's Association where their vacation allowance is paid currently with their pay there will be added to all rates and charges expressed herein, ~~*including charges based on bare labor cost,~~ the differential allowed for such vacation allowance plus insurance at 11%. This differential, which is presently \$.07 per man hour, shall be charged on all straight time hours and the straight time portion of overtime hours.

* (Delete. See our letter 8/24/49.)

Defendant's Exhibit A-9—(Continued)

D. Under date of June 21, 1949 the Waterfront Employers of Washington entered into an agreement with all employees covered by contracts with the International Longshoremen's Association, District 38, establishing a welfare fund to which the employers must contribute .008 of all wages. To all rates and charges expressed herein, including charges based on bare labor cost, there shall be added (.008%)** of the total payroll. This percentage mark up shall be billed separately for the over-time differential when work is performed on over-time.

** See our letter 11/10/49.

Included in rate. See our letter 10/23/50.

XII.

This Agreement shall be in force and effect from date hereof and shall continue in force and effect until terminated by either party giving thirty days written notice to the other. At any time and from time to time the parties hereto may request a review of the rates quoted herein to determine if the rates should be revised upwards or downwards.

This Agreement shall bind, apply and inure to the benefit of the successors and assigns of the respective parties.

Defendant's Exhibit A-9—(Continued)

In Witness Whereof the parties hereto have duly executed this agreement in duplicate the day and year first above written.

/s/ By E. L. McCORMICK,
Pres. Williams, Dimond & Co.

/s/ By GERALD A. DUNDON,
V. P. and General Manager.

* * * * *

Admitted in Evidence Nov. 14, 1957.

[Endorsed]: No. 15863. United States Court of Appeals for the Ninth Circuit. Pope & Talbot, Inc., a corporation, Appellant, vs. Jack V. Cordray, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed: January 21, 1958.

Docketed: January 23, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 15863

POPE & TALBOT, INC., a corporation,
Appellant,

vs.

JACK V. CORDRAY, Appellee.

STATEMENT OF THE POINTS ON WHICH
APPELLANT INTENDS TO RELY UPON
APPEAL

1. The United States District Court for the Western District of Washington, Northern Division, did not have jurisdiction to entertain or adjudicate the purported cause of action premised upon the claim asserted by plaintiff that the general maritime law permits a recovery by a person occupying the status of Jack V. Cordray irrespective of whether or not the defendant and appellant was guilty of actionable negligence or irrespective of whether or not the defendant-appellant was guilty of any fault which proximately caused or proximately contributed to injury sustained by the plaintiff-appellee.

2. The District Court of the United States for the Western District of Washington, Northern Division, was without jurisdiction of the subject matter of the claim based upon the so-called unseaworthiness doctrine as enunciated by the United States Supreme Court in the case of Seas Shipping

Co. v. Sieracki, 328 U.S. 85, 90 L.ed. 1099, for the reason, inter alia, that the Supreme Court of the United States was without the power to create a right of action for damages for the benefit of a seaman, irrespective of actionable negligence on the part of the owner of a ship or the employer of a seaman, pursuant to which such seaman might recover compensatory damages by reason of injuries suffered in consequence of the unseaworthiness of a ship or a failure on the part of the owner of a ship or the employer of a seaman to supply and keep in order the proper appliances appurtenant to the ship; and in purporting to create such right of action the Supreme Court of the United States acted entirely outside its function and unconstitutionally invaded and usurped the legislative power which is vested exclusively in the Congress of the United States pursuant to Article I, Section 1, Constitution of the United States and/or the legislative power vested in the legislative body of the State of Pennsylvania pursuant to the Constitution of that State.

3. The District Court of the United States for the Western District of Washington, Northern Division, was in the status of another court of the State of Washington in respect of plaintiff-appellee's action for damages by reason of personal injuries; and the substantive law applicable to all of the facts and circumstances involved in the action was that of the State of Washington, in view of the fact that the alleged accident occurred upon navigable waters which were a part of the aquatic domain of the State of Washington; and said naviga-

ble waters were not navigable waters of the United States of America.

4. The original complaint as filed in the State Court in the case at bar did not state facts sufficient to constitute a cause of action.

5. The complaint, as amended subsequent to the removal of the action by reason of the existence of diversity of citizenship, did not state facts sufficient to constitute any cause of action in favor of the plaintiff and against the defendant pursuant to the substantive law of the State of Washington.

6. The complaint, as amended, did not contain simple, concise and direct averments of fact showing that the plaintiff was or is entitled to relief.

7. The complaint, as originally filed in the State Court, and as amended after the action was removed to the District Court of the United States for the Western District of Washington, Northern Division, did not state facts sufficient to constitute actionable negligence or any other actual cause of action in favor of the plaintiff and against the defendant.

8. The trial court erred in each and every ruling, order, decision or action adverse to the defendant-appellant appearing within and shown by the matters and things included within defendant-appellant's designation of the contents of the transcript of record on appeal.

9. The evidence is insufficient to support the general verdict rendered by the jury or the judgment

based upon said verdict; and the evidence is also insufficient to support implied findings of fact in favor of the plaintiff in respect of the required elements of actionable negligence or the required elements of any other actual cause of action available to the plaintiff or provided by any valid statute or any other valid law pursuant to which the plaintiff might claim the existence of a cause of action for damages by reason of bodily or personal injury.

10. The evidence is insufficient to support an implied finding of fact by the jury that at the time and place of the alleged injury suffered by plaintiff he was an invitee of the defendant-appellant; and it will also be contended on appeal that the plaintiff-appellee was at all times pertinent nothing more than a trespasser.

11. The contract pursuant to which plaintiff's employer, Olympic Steamship Company, agreed to and was performing certain services as an independent contractor was not a maritime contract; and plaintiff, as an employee of said Olympic Steamship Company, was not at any time engaged in the performance of any maritime service. Pursuant to the only possible contract in accordance with which the said Olympic Steamship Company was performing service of any kind or character, it was agreed that said employer of plaintiff was to have nothing whatever to do with the unloading of the vessel upon which plaintiff was standing or walking at the time he sustained his alleged injury.

12. The trial court erred in refusing to grant the

motions, and each thereof, made by the attorney of record for defendant-appellant. By the foregoing, defendant-appellant refers to the various motions, and each thereof, included within its designation of those portions of the record on appeal which are to be included in the printed transcript of record, said designation being the one which is served and filed simultaneously with this particular document.

13. The trial court erred, to the prejudice of defendant-appellant, in giving instructions to the jury upon the request of the plaintiff and also upon the trial court's own motion; and in refusing to give pertinent and correct instructions as proposed by defendant-appellant.

14. The trial court erred in denying the motions of defendant-appellant to dismiss plaintiff's action, to direct a verdict in favor of the defendant-appellant as to each alleged separate claim or separate cause of action; and in refusing to grant the motions of defendant-appellant for judgment notwithstanding the verdict of the jury; and in refusing to grant the motion of defendant-appellant for a new trial; and in refusing to require the plaintiff-appellee to agree to a reduction in the amount of the damages awarded by the jury or in lieu thereof to grant a new trial upon all issues.

15. A particular and specific contention will be raised in respect of the act of the trial judge in reading to the jury the contents of paragraph VIII of the pre-trial order, and, in addition thereto, in

interpolating and adding thereto additional and prejudicial statements of fact.

16. Excessive damages were awarded under the influence of passion and prejudice on the part of the jury or by reason of the failure on the part of the trial court to properly instruct the jury upon the subject of damages and the amount of the verdict is not supported by the competent or relevant or material evidence in the record. The trial court erred as pointed out by the attorney of record for the defendant-appellant in the exceptions taken to the instructions as given and to the refusal of the trial court to instruct as requested by the defendant, as shown by that portion of the Reporter's Transcript of the oral proceedings containing the instructions given and the exceptions taken thereto by the defendant-appellant and the exceptions also taken by defendant-appellant to the refusal of the trial court to instruct in accordance with the proposed and requested instructions on behalf of defendant-appellant; and said matters were not otherwise fairly or accurately covered by the instructions as actually given to the jury. The trial court erred in refusing to submit special interrogatories, as requested by the defendant-appellee, to the jury. This action on the part of the trial court was arbitrary and a clear abuse of discretion because of the fact that the trial court permitted the jury to render a general verdict in respect of two separate and distinct claims and did not in any manner require the jury to indicate whether their verdict was in

favor of the plaintiff with respect to both of said claims or only in respect of one of them.

Dated: January 28, 1958.

LASHER B. GALLAGHER,
CHARLES B. HOWARD,
/s/ By LASHER B. GALLAGHER,
Attorneys for Appellant.

Affidavit of Service Attached.

[Endorsed]: Filed Jan. 28, 1958. Paul P.
O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

DESIGNATION BY APPELLANT OF
RECORD TO BE PRINTED

Pope & Talbot, Inc., a corporation, Appellant herein, designates the following pleadings, documents and portions of the record on appeal as transmitted to the Clerk of the above entitled Court by the Clerk of the United States District Court to be printed or otherwise reproduced and included in the transcript of record on appeal; and requests that said matters be printed in the order, consecutively, as hereinafter designated; and that in those cases where the testimony of witnesses appears in separate places in the Reporter's Transcript by reason of the temporary withdrawal of a particular witness for the purpose of permitting another witness to testify out of order, that all of the testimony

of such witness or witnesses as designated hereinafter be printed in the same section of the transcript of record so that all designated testimony given by any particular witness will be readily available for examination by the Court.

Appellant's designation is as follows:

(Note: The designations hereinafter set forth are identified by the letters of the alphabet. The arabic figures referred to in the designations are taken from the Certificate of the Clerk of the United States District Court.)

A. 1. Petition for removal from State Court to District Court, with complaint attached.

B. 4. Defendant's answer.

C. 14. Notice of application for trial amendment by plaintiff.

D. 18. Order granting leave for amendment of plaintiff's complaint.

E. 19. Defendant's answer to amendment of plaintiff's complaint.

F. 26. Pre-trial order.

G. 40. Defendant's motion for dismissal of action under FRCP Rule 41(b).

H. 41. Defendant's motion for directed verdict against plaintiff under FRCP Rule 50, at close of all the evidence.

I. 35. Defendant's requested instructions as follows:

Instruction No. 4;

Instruction No. 5;

Instruction No. 7;

Instruction No. 10;

Instruction No. 12;

Instruction No. 15;

J. Special interrogatories 1-6 (located at end of defendant's proposed instructions).

K. 42. Verdict for plaintiff.

L. Excerpt from Clerk's Docket entries on November 18, 1957 showing entry of judgment on verdict.

M. 43. Defendant's motion for new trial under FRCP Rule 59.

N. 44. Motions to have verdict and any judgment thereon set aside and for entry of judgment in favor of defendant.

O. 49. Order denying motion for new trial and denying motion for judgment NOV.

P. 50. Cost and supersedeas bond on appeal.

Q. 51. Notice of appeal.

R. 52. Appellant's designation of record on appeal.

S. 64. Appellant's second supplemental designation of record on appeal.

T. 65. Appellant's third supplemental designation of record on appeal.

U. 53. Statement of points under FRCP Rule 75(d) upon which appellant intends to rely.

V. 66. Order directing transmission of original exhibits.

W. The following portions of plaintiff's exhibit No. 3—Seattle Terminals' Tariff No. 100:

Text of Item No. 20—on acceptance of tariff as appears on original page 13.

Text of Item No. 120 as appears on original page 14.

Text of Item No. 380, being entire contents of body of original page 20.

Text of line 1 of original page 22, identified by the beginning words "Column A".

Text of Items 420 and 430, being entire body of original page 23.

X. The following portions of plaintiff's exhibit No. 4, being Seattle Terminals' Tariff No. 2-D:

List of participating terminals, including Olympic Steamship Co., Inc., as appears in body of second revised page 4.

Text of Items No. 10 and 30 as appear on original page 14.

Text of Item No. 90 as appears on first revised page 15.

Text of Items 110 and 130 as appear on original page 16.

Text of Items No. 140 and 190 as appear on original page 17.

Text of Items 200, 210 and 220 as appear on original page 18.

Text of Item No. 600 as appears on original page 29.

Y. Text of all entries in defendant's exhibit A-1 (Bridge Log Book) for dates of July 13, 14 and 15, 1956. (Photostatic copies.)

Z. Reproductions of defendant's exhibits A-7 and A-8, being photographs on ship.

AA. Excerpt from defendant's exhibit A-9 from

and including the words "Stevedoring Contract" to and including the words "General Manager". This document is further identified by the words, in full caps, "Memorandum of Agreement: Made this 1st day of July, 1949."

BB. Text of defendant's exhibits A-5 and A-6, (being Waterfront Employers' letters concerning earnings of plaintiff).

CC. Text of plaintiff's exhibit No. 7 (being Waterfront Employers' letter reporting hours worked by plaintiff).

DD. Appellant's Statement of Points under CA9 Rule 17(6).

EE. 67. Contents of Court Reporter's Transcript of oral proceedings [Statement of Facts], Volumes I and II, from beginning to end thereof, but excluding the following pages or portions thereof:

Page 1, line 24 through page 2, line 9;

Page 2, line 12 through page 6, line 12;

Page 7, line 8 through line 13;

Page 8, line 4 through line 7;

Page 14, line 6 through line 11;

Page 18, line 17 through line 22;

Page 20, line 9 through line 17; and line 19 through line 25;

All of colloquy from page 21, line 1 through page 28, line 14;

Page 29, line 7 through line 25;

Page 30, line 1 through line 2; and line 10 through line 13; and line 19 through line 25;

Page 31, line 1 through line 9; and line 17 through line 25;

Page 32, line 1 through line 7; and line 17 through line 25;

Page 33, line 13 through line 25;

Page 34, line 1 through line 4;

Page 36, line 6 through line 12; and line 23 through line 25;

Page 38, line 22 through line 25;

Page 39, line 24 through line 25;

Page 40, line 1 through line 9;

Page 42, line 17 through line 25;

Page 43, line 1 through line 9; and line 15 through line 25;

Page 44, lines 1 and 2; and line 18 through line 23;

Page 56, line 23 through line 25;

Page 57, line 1 through line 14; and line 25;

Page 58, line 1 through line 14;

Page 63, line 14 through line 23;

Page 65, line 1 through line 5; and line 10 through line 11; and line 15 through line 17;

Page 66, line 1 through line 6; and line 13 through line 14; and line 20 through line 24;

Page 67, line 4 through line 8; and line 13 through line 14;

Page 68, line 12 through line 25;

Page 70, line 23 through line 25;

Page 75, line 20 through line 22;

Page 77, line 14 through line 18;

Page 78, line 6 through line 17; and line 19 through line 25;

Page 79, line 1 through line 25;

Page 80, line 1 through line 18;

Page 82, line 19 through line 22;

Page 84, line 3 through line 22;

Page 86, line 11 through line 14;

Page 89, line 23 through line 25;

Page 90, line 1 through line 7;

Page 93, line 6 through line 14;

Page 98, line 7 through line 10;

Page 103, line 8 through line 12;

Page 108, line 5 through line 9;

Page 112, line 7 through line 14;

Page 117, line 16 through line 22;

Page 147, line 1 through line 16; and line 18 through line 25;

Page 148, line 10 through line 17;

Page 150, line 4 through line 15;

Page 156, line 15 through line 23;

Page 163, line 23 through line 25;

Page 164, line 1 through line 24;

Page 165, line 5 through line 9; and line 14 through line 22;

Page 166, line 3 through line 25;

Page 167, line 1 through line 3; and line 18 after the word "over" through line 22;

Page 175, line 11 through line 14; and line 16 through line 25;

Page 176, line 1 through line 19;

Page 177, line 3 through line 14; and line 23 through line 25;

Page 178, line 1 through line 21;

Page 181, line 18 through line 25;

Page 182, line 1 through line 12;

Page 190, line 3 through line 15;

Page 196, line 15 through line 25;

Page 197, line 1 through line 3;

Page 198, line 9 through line 17;

Page 203, line 2 through line 10;

Page 215, line 10 through line 25;

Page 216, line 1 through line 13;

Page 220, line 7 through line 19;

Page 221, line 23 through line 25;

Page 222, line 23 through line 25;

Page 223, line 1 through line 6; and line 23 through line 25;

Page 224, line 1 through line 25;

Page 225, line 1 and line 2;

Page 228, line 12 through line 24;

Page 231, line 16 through line 25;

Page 234, line 17 through line 20;

Page 236, line 7 through line 24;

Page 237, line 11 through line 16;

Page 238, line 5 through line 10; and line 18 through line 25;

Page 241, line 14 through line 25;

Page 242, line 13 through line 25;

Page 243, line 1 through line 3; and line 18 through line 25;

Page 244, line 1 through line 6;

Page 245, line 5 through line 25;

Page 246, line 9 through line 14; and line 21 through line 25;

Page 247, line 1 through line 10; and line 20 through page 250, line 20;

All of argument and colloquy between Court and counsel appearing from page 251 through page 273;

Page 300, line 2 through line 20;

Page 301, line 15 through line 21;

Page 302, line 8 through line 15;

Page 303, line 2 through line 25;

Page 304, line 1 through line 12;

Page 305, line 4 through line 18;

Page 307, line 6 through line 24;

Page 311, line 17 through line 22;

Page 319, line 1 through line 18;

Page 321, line 6 through line 25;

Page 329, line 6 after words "a practice" through line 13;

Page 342, line 5 through line 25;

Page 343, line 1 through line 3;

Page 361, line 6 through line 11; and line 17 through line 25;

Page 362, line 1 through line 22; and line 24 and line 25;

Page 363, all of page except line 15;

Page 364, line 1 through line 18;

Page 367, line 6 through page 387, line 6;

Page 388, line 22 through page 389, line 12;

Page 395, line 18 through line 25;

Page 405, line 6 through line 14; and line 18 through line 25;

Page 406, line 1 through line 9;

Page 411, line 19 through line 25;

Page 415, line 1 through line 23;

Page 416, line 1 through 11; and line 15 through line 23;

Page 419, line 10 through line 25;

Page 420, line 1 through page 447, line 18;

Page 448, line 4 through page 471, line 6;

Page 492, line 17 through line 21;

Page 495, line 7 through line 14;

Page 499, line 20 through page 503, line 14;

Page 514, line 21 through page 515, line 13;

Page 516, line 13 through line 22;

Page 522, line 14 through line 24;

Page 523, line 1 through line 13; and line 21 through line 25;

Page 524, line 1 through line 11;

Page 526, line 21 through page 528, line 4;

Page 529, line 5 through page 530, line 19;

and

Page 530, line 24 through page 532, line 12.

FF. A copy of this designation.

Dated: January 28, 1958.

LASHER B. GALLAGHER,

CHARLES B. HOWARD,

By LASHER B. GALLAGHER,

Attorneys for Appellant.

Affidavit of Service Attached.

[Endorsed]: Filed Jan. 28, 1958. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

AMENDED AND SUPPLEMENTAL DESIGN-
NATION BY APPELLANT OF RECORD
TO BE PRINTED

Line 19, page 8 of original "Designation by Appellant of Record to be Printed" should read "Page 147, line 1 through line 16; and";

Page 10, lines 19-20-21 of original "Designation by Appellant of Record to be Printed" is withdrawn and the following is substituted therefor: "From and including the words 'I found', page 255, line 13, to and including line 17, page 260; and from and including line 8, page 261, to and including line 2, page 263. [All of the remaining argument and colloquy between Court and counsel commencing with line 5, page 251, to and including line 6, page 273, is to be printed]".

Also print a copy of this "Amended and Supplemental Designation by Appellant of Record to be Printed".

Dated: January 29, 1958.

LASHER B. GALLAGHER,
CHARLES B. HOWARD,
/s/ By LASHER B. GALLAGHER,
Attorneys for Appellant.

Affidavit of Service Attached.

[Endorsed]: Filed Jan. 29, 1958. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

DESIGNATION BY APPELLEE OF ADDITIONAL PORTIONS OF RECORD TO BE PRINTED

Appellee herein designates for printing the following additional pages or portions thereof, of the contents of Court Reporter's Transcript of oral proceedings (Statement of Facts), Volumes I and II, as excluded in whole or part by appellant's designation:

Page 30—Line 20 through Line 25.

Page 31—Line 1.

Page 33—Line 13 through Line 17.

Page 149—Line 1 through Line 16 and Line 18 through Line 25.

Page 178—Line 5 through Line 25.

Page 196—Line 15 through Line 25.

Page 197—Line 1 through Line 3.

Page 239—Line 1 to Page 273, Line 10.

Page 295—Line 22 to Page 321, Line 1.

Page 367—Line 6 through Line 23.

Page 370—Line 22 through Line 25.

Page 371—Line 1 through Line 25.

Page 372—Line 1 through Line 25.

Page 373—Line 1 through Line 5.

Page 426—Line 1 through Line 25.

Page 427—Line 1 through Line 10.

Page 429—Line 20 through Line 25.

Dated February 4, 1958.

/s/ PHILIP J. POTH,
Attorney for Appellee.

Affidavit of Service Attached.

[Endorsed]: Filed Feb. 5, 1958. Paul P.
O'Brien, Clerk.

